UNIVERSITY OF PENNSYLVANIA

FEDERAL REGULATION OF RAILROAD CONSTRUCTION AND ABANDONMENT UNDER THE TRANSPORTATION ACT OF 1920

FRANK T. HYPPS

A THESIS IN ECONOMICS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

PHILADELPHIA
1929

FEDERAL REGULATION OF RAILROAD CONSTRUCTION AND ABANDONMENT UNDER THE TRANSPORTATION ACT OF 1920

A THESIS IN ECONOMICS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY

FRANK T. HYPPS

PHILADELPHIA
1929

Copyrighted 1929
by
Frank T. Hypps
Philadelphia, Pa.

CONTENTS

Introduction 5

Historical Background of Certificates of Public Convenience and Necessity 6

Provisions of the Transportation Act of 1920 16

Administration by the Interstate Commerce Commission 19

The Power of the Interstate Commerce Commission in Conflicts with State Authorities 32

Certificates for New Railroad Construction 40

Certificates for Abandonment of Railroads 58

Conclusions 71

Appendix (A) 77

Appendix (B) 79

Bibliography 81

INTRODUCTION

Pursuant to recommendations of the Interstate Commerce Commission and of the National Transportation Conference in 1919 Congress enacted paragraphs (18)-(20) of Section I of the Transportation Act of 1920, requiring all carriers under the jurisdiction of the Act to secure a certificate of "Convenience and Necessity" before extending their old lines or constructing new ones, or before any carrier might abandon any part of its existing line of railroad.

In the administration of these new provisions of the Federal Law many problems have confronted the Commission in carrying out its primary function of whether or not the "public interest" will be subserved by permitting a new railroad to be constructed or an existing railroad to be abandoned.

These problems have their origin in the historical development of our transportation facilities; the common law and direct statutory restrictions surrounding their growth; the efforts exerted by various state regulatory bodies established to control the nature of railroad development within their respective jurisdictions; the influence of the Act to Regulate Commerce of 1887, and its various amendments; the Transportation Act of 1920, and its provisions, and lastly the inevitable problems arising because of the presence of private, state and Federal interest in the development of our transportation facilities.

In connection with this study the various tests applied by the Commission to determine the constituent elements of the "public interest" to which the statute refers have been traced; together with the nature and reasons for new railroad construction, and the conditions surrounding the abandonment of existing railroad facilities, since the enactment of paragraphs (18)-(20) of Section I of the Act of 1920, so that a better understanding may be had of this new phase of Federal regulation and its effects upon the transportation system of the country.

The author wishes to express his gratitude to Dean Emory R. Johnson and Dr. Grover G. Huebner, of the Wharton School of Finance and Commerce, for their guidance and criticism in the completion of this study.

FRANK T. HYPPS.

CHAPTER 1

Historical Background of Certificates of Public Convenience and Necessity

The passage of the Act to Regulate Commerce of 1887 and its various amendments, revolutionized the relationship of the railroads and the public with regard to the control of abuses, the prevention of excessive and discriminatory rates and the enforcement of various safety-of-service regulations; just so the enactment of the Transportation Act of 1920 revolutionized the relationship of the railroads and the public with regard to the control of corporate management in the issuance of certificates of convenience and necessity for the construction of new lines and the abandonment of old lines of railroad.

No longer may a railroad begin operation or abandon its existing service without obtaining from the Interstate Commerce Commission a Certificate or Permit, evidencing the Commission's opinion that the "public convenience and necessity" require the services of the new line or can do without the existing services.

When one considers that railroad regulations in the United States have as their purpose the perpetuation of ideals and standards attained in the field of natural competition, it becomes evident that these regulations, in so far as they relate to economic matters, are in reality but the crystallization of common customs and practices developed in the growth and advancement of transportation facilities. Because of this relationship the regulation of certificates of "convenience and necessity" must be viewed from the standpoint of the historical development of transportation facilities and their regulation.

Early in our history it became the policy of our government, as that of England and other countries, to construct and operate highways requiring large expenditures of capital, such as toll roads, canals, and railroads, through the agency of corporations with private capital, organized under legislative acts. This policy

resulted in creating three distinct interests in the highways so constructed: the private capital interest, represented in the rights of the companies; the public interest, the general welfare of the state, and the material interests of local people who, accepting this governmental provision, had gone out along the railroad into new territory and invested their money in homes and business enterprises depending upon the railroad thus established, and its maintenance for access to market cities. It is thus seen that the state may furnish railroad facilities in either of two ways: It may build them or it may permit persons or corporations to build them. In either case they are public railroads and the use and continuance of such railroads are subject to governmental regulations and control.

That the chartering of these railroad companies was a "grant of power belonging to the state itself" and gave to the state the right to control the railroad was clearly stated by Justice Strong of the Supreme Court of the United States.[1]

> "That railroads, though constructed by private corporations and owned by them are public highways, has been the doctrine for nearly all the courts ever since such conveniences for passage and transportation have had any existence. . . . It has never been considered a matter of importance that the road was built by the agency of a private corporation. No matter who is the agent the function performed is that of the state. Though the ownership is private, the use is public."

The construction of railroads, like the opening of ordinary streets and highways, requires the exercise of sovereign powers and legislative discretion, and carries with it the obligation on the part of the state to meet and supply the public needs: such as the enlargement and efficiency of government; the development of population and wealth, and the collection and distribution of public revenues, all of which are dependent upon the construction and operation of railroads and their proper regulation.[2]

The formula of "public convenience and necessity" is by no means a new one. For many years the phrase—or its alternative,

---

[1] Olcott v. Supervisors (1872 U. S.), 16 Wall. 678, 394.

[2] Lake Shore and Michigan Ry. v. Ohio (1899), 173 U. S. 285, 302, 19 Sup. Ct. 465, 472.

"common convenience and necessity"—ran through state statutes. A state statute would allow the construction of a railway in certain localities, if in the judgment of those in authority such construction was required by "public convenience and necessity." The enforcement of the duty, that is, the application and construction of the phrase, was imposed upon the courts. The test was also employed in direct statutory regulation of public utilities which preceded the era of commission control. In the case of Re Shelton Railroad, the Connecticut court held that the statute of the state regulating railroads denied such carriers the right to build their lines parallel to an existing railroad unless a county court should return a finding that "public convenience and necessity" required the construction.[1] In its opinion the Court stated: "The 'public convenience and necessity' sufficient to require the construction of such a railroad, means a condition existing at the time of the application, in respect to the applying railroad, the mode of public travel, the manner in which those needs are to be supplied, and the whole question of adequately supplying those needs—that, in the judgment of the Court, will justify the interference with private rights involved."

It is thus seen that the state has a direct interest in the construction of every railroad. In like manner the state has a direct concern in the abandonment of every railroad built under its grant of power, and a duty of protection to perform to the people who have gone out along the railroad which it is contemplated to abandon.

This duty of the state in abandonments is illustrated by many laws and statutes dealing with different phases of the subject. For example, during the early period of highway construction in the United States a highway could not be closed without the consent of the abutting owners.[2] Even a private easement over lands for passage to and from a property may not be closed against the consent of the holder of the easement. These and other instances that might be cited show the duty of the state in protecting its citizens against any action that will unduly

[1] 69 Conn. 626 (1897).

[2] 27 A. & E. Enc. Law (2d ed. 1904), 113, 114; 2 Elliott, Roads and Streets (3d ed. 1911), sec. 1180.

curtail their free movement or prejudice their privileges, or render their properties less valuable or accessible.

In reference to the forfeiture or expiration of charters for turnpikes or toll roads Elliott states the law as follows:[1]

"If the corporation owning the turnpike suffers it to get out of repair the corporate franchise may be forfeited to the state, and in that event the road will become a public way of the governmental corporation or body having control of roads of like character. This result will follow if the road is abandoned by the private corporation. . . . A corporation accepting a charter authorizing the construction of a public highway ought to be held to take the franchise granted, upon the condition that on the dissolution of the corporation the road shall remain open to the public. In one of the oldest cases upon this subject it was declared that highways could be discontinued only by authority of law and never by the act of individuals."[2]

In a footnote the author says:[3]

"The fact that a private corporation desires to abandon the road and does abandon it, leaves it a passage for travel as long as the public chooses to treat it as such. The act of the private corporation does not take away the rights of the public."

It is readily seen that private parties affected by the abandonment of a railroad may be so wide spread from the line of the railroad and so indefinite as to make it impossible to determine the territorial limits within which a consent of those affected should be obtained. It must, therefore, be left to the state to determine and fix the conditions of abandonment so that the public and private interests shall be protected to the extent permitted by constitutional law.

Although the right of a carrier to abandon a railroad that can be operated only at a loss, further losses being incurred by continuing the operation, is acknowledged, the relation of a railroad to the state in such cases is so close and subordinate that the consent of the state is essential to the protection of the people who have gone out along the railroad, practically at the invitation of the state, and invested in lands and industrial enterprises, the

[1] Ibid., sec. 80.
[2] Dawes v. Hawkins (1860), 8 C. B. (N. S.), 848.
[3] Elliott, Roads and Streets (3d ed. 1911), sec. 80, note 12.

value of which is dependent upon the continued operation of the railroad. That this is so was forcefully stated by Mr. Justice Campbell, of the Supreme Court of the United States:[1]

> "Important franchises were conferred upon the corporation to enable it to provide the facilities of communication and intercourse, required for the public convenience. Corporate management and control over these were prescribed, and corporate responsibility for their insufficiency provided, as a remuneration to the community for their grant. The corporation cannot absolve itself from the performance of its obligations, without the consent of the legislature."

That the certificate of "public convenience and necessity" was vital to the successful regulation of state railways is shown by its requirements in many of the early state public utility statutes. However, at this time there was a difference of opinion on the question whether the control exercised by the state over railroad construction should be advisory or mandatory. These two opposing theories were generally referred to as the "publicity" method and the "control" method. Massachusetts as early as 1869 provided for a railroad commission with powers to investigate and to report upon the conditions surrounding railroad operation to the state attorney-general for such action as he might deem expedient. Wisconsin, on the other hand, in 1874, gave its railroad commission mandatory powers over the railroads within the state. This law was repealed, but the present law gives to the commission control over all phases of the problem of service, safety and public convenience and necessity. Many of the features of the Wisconsin law have been adopted in whole or in part by a number of states.

The following is a list of the states in which there is a statute requiring the issuance of a certificate of convenience and necessity prior to the construction or abandonment of a railroad line: Arizona, California, Colorado, Idaho, Illinois, Indiana, Kansas, Maine, Massachusetts, Maryland, Missouri, Montana, Nevada, New Hampshire, New

---

[1] The York and Maryland Line Ry. v. Winans (1854 U. S.), 17 How. 30, 39 quoted approvingly in Thomas v. Ry. (1879), 101 U. S. 71, 83.

Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, West Virginia.[1]

This development of state regulation over the control of new railroad construction and the abandonment of existing railroad services in the absence of Federal control had many beneficial effects upon the development of the railroads of the United States. These effects are seen in part in the prevention of the many financial blunders that marked the early periods of railroad development; the checking of many wasteful and unnecessary duplications of railroad facilities and the disruption of existing services.

However, little uniformity was found in the administration of the regulations established by the various states, and many states exercised no control whatsoever. This lack of uniformity and the absence of control soon brought about much misunderstanding between the states and the Federal government. Particularly was this lack of uniformity evident in its influence on the freight rates that were charged for the services rendered by the various carriers. The State of Texas,[2] for example, in order to build up the state's manufacturing and jobbing centers at the expense of the manufacturing and jobbing centers established in neighboring states, required the railroads under its jurisdiction to maintain a scale of rates which discriminated against shipments into Texas from surrounding states. This policy deprived the carriers located outside of Texas of their proper share of the traffic and revenue arising from shipments moving into Texas—the share that was necessary for the adequate maintenance of their lines.

That policy together with other rate and economic problems arising out of state regulation of railroads caused the carriers to bring before the Commission the contention that rate schedules were not sufficient after paying the cost of operation and fixed

---

[1] Holmes, F. L., Regulation of Railroads and Utilities in Wisconsin, 1915. McVeagh, R., The Transportation Act of 1920. 1924.

Some other states seem to have a similar statute with regard to public utilities, but not as to steam railroads.

[2] Houston, East and West Texas Railway Company v. United States. 234 U. S. 342. (1914.)

charges, to yield a fair return on the value of the railroad property devoted to transportation[1]

When the decisions of the Interstate Commerce Commission were appealed from, the courts held that interstate and intrastate railroads were so interrelated that the regulation of one may involve the control of the other and that it is Congress and not the state that is entitled to prescribe the final and dominant rule of regulation. Otherwise Congress would be denied the exercise of its constitutional authority, and the state and not the Federal government would be supreme within the national field.

These conditions when viewed in the light of the development of the railroad mileage of the United States clearly show the need for Congress to adopt some form of Federal control of railroad development that would check the feverish desire of many carriers to obtain revenue for their lines without regard to the effect such a policy would have on neighboring carriers.

At the end of 1916 the railroad mileage of the country had reached its maximum growth having reached 254,037 line miles.[2] At the close of 1919, two months prior to the passage of the Act of 1920, 253,152 miles were reported, showing a shrinkage of 885 miles of railroad from that of 1916. The actual abandonments, however, were greater than this figure would indicate because there was much new construction during this period. The significance of this reduction in railroad mileage brought about through abandonment has been called to the attention of the public by a great many who have discussed the railroad situation.[3]

However, it was not until the Transportation Act of 1920 that the regulation of railroad construction and abandonment was employed by the Federal government in the regulation of interstate commerce. By paragraphs (18)-(20) of Section I of the Act[4]

---

[1] American Express Company v. Caldwell, 244 U. S. 617.
Illinois Central Railroad Company v. State Utilities Commission of Illinois, 254 U. S. 493.
Five Percent Case 31 I. C. C. 351.
Western State Advance Case 31 I. C. C. 325.

[2] Thirty-seventh Annual Report on the Statistics of Railways in the United States. 1923.

[3] National Transportation Conference. Program of Railway Regulation (1919).

[4] 41 Stat. 456 at 477-478 (1920), U. S. Comp. Stat. (Supp. 1923).

Congress required all carriers under the jurisdiction of the Act to secure a certificate before extending their old lines or constructing new lines, or before abandonment of any part of their existing lines.

Senator Cummins (Iowa) in a speech before the Senate prior to the passage of Section I (18)-(20) of the Act of 1920, vigorously emphasized the importance of the problem:

"It presents to the country a question which ought to be considered and ought to be decided without passion or prejudice, and ought to be decided without respect to the effect which it is supposed it would have upon any particular part of the United States. If there is any one thing from which the transportation system of the country, taken as a whole, is now suffering, it is from unguided, uncontrolled right of owners to build railroads wherever they may see fit to build them and whenever they can avail themselves of an opportunity to sell at a profit the securities based upon the proposed construction. The railways of the United States are not built where they should have been built. Everybody understands that. A great many have been built that never should have been constructed. We are now under the disadvantage of having developed a system which must be maintained because communities have been built up along the railways, and their interests can not be disregarded in the regulations which we shall adopt. The whole trouble . . . has arisen because of the building of railways simply to make money out of their construction and without regard to the possible profit of their operation.

"We propose here to grant a governmental body the right to survey the situation, and then say, as to a railroad which is to be a common carrier and to be engaged in interstate commerce, whether under the circumstances, looking at the future of the community and the opportunity for traffic and everything of that sort, it is a fair and reasonable venture upon which the people of the country will be called upon eventually to pay a return.

"This does not relate at all to a railroad that is willing to content itself with purely intrastate traffic; but if the road carried commerce between the states then I think it would be compelled to apply to the commission under this section."[1]

The provision of this new phase of Federal regulation does not apply to industrial carriers or short lines constructed pri-

[1] Congressional Record, Volume 59, pp. 748-750.

marily to serve a particular plant or industry in the interest of which it is owned and operated.[1]

The primary purpose of requiring carriers to secure certificates of convenience and necessity "is not regulation with a view to safety, it is designed primarily to promote good service by excluding unnecessary competing carriers."[2] It effects this purpose in at least two ways: first, by giving the commission the power to refuse to permit railway operation in a given territory where the existing transportation facilities seem to meet the public need or convenience; second, it gives an authorized carrier a right of subsistence in which it will be protected against unwarranted carriers seeking to compete with it. These features when coupled with the consolidation provisions of the Act of 1920, are truly a reversal of the old idea that the wise policy to follow was to get as many competitive railroads as possible. A policy that has been the prime cause of the construction of a network of railroads throughout the country without any real regard to the economics of the situation.

Senator Robinson of Arkansas, on December 19, 1919, touched upon this problem when he stated before the Senate Committee on Interstate Commerce, of which he was a member, that:[3]

"One of the fundamental principles and purposes of this bill is to so organize the railroads of the United States, and to so consolidate them into a number of competing systems that hereafter the rates may be so adjusted that all railroads may be maintained. If you strike out this provision you weaken the consolidation features of this bill. It is true that in all probability in the future there will not be so many miles of railroad constructed the construction of which the public interest does not justify as in the past, but if we are to reorganize the railroads and put them on a sound financial basis we ought not to leave it to the power of any one in any locality to undo the very thing we are trying to do. . . .

"The purpose of this provision in the bill is to recognize as the controlling consideration the right and interest of the public to have reasonable and adequate transportation facilities and to escape payment for transportation facilities that are not needed and are mere duplications of existing facilities."

---

[1] 23 I. C. C. 277.

[2] Mr. Justice Brandeis, for the court in Buck v. Kuykendall, 267 U. S. 307, 315, 45 Sup. Ct. 324, 326 (1925).

[3] Congressional Record, Volume 59, pp. 862-863.

Such a purpose must necessarily carry with it the power to authorize abandonment of an existing carrier. For if such a power were to remain in the hands of the states that power might be exercised in a manner prejudicial to interstate commerce.

Moreover, to allow the construction of a new line of railway which is not necessary or appropriate for the proper performance by the carrier of service to the public as a common carrier, or to allow the abandonment of a line of railway which will impair the railway's ability to perform that service, would be an act contrary to the public interest and one that would prevent the Commission from exercising that fostering guardianship and control of the railways that will secure for the people of the United States a well balanced railway system.

CHAPTER 2

Provisions of the Transportation Act of 1920

Paragraphs (18)-(20) of Section I[1] of the Transportation Act of 1920 are essentially legislative and administrative measures of a restrictive nature affecting the corporate management of railroads. The requirements of the law are that after May 28, 1920, it shall be unlawful for any carrier by railroad subject to the Act to undertake the extension of its line of railroad, or the construction of a new line of railroad, or to engage in transportation under the Act over or by means of such additional or extended line of railroad, unless there has first been obtained from the Commission a certificate showing that the present and future public convenience and necessity require or will require the construction and operation of such additional or extended line of railroad. Moreover, no carrier by railroad subject to the Act may abandon all or any portion of a line of railroad, or the operation thereof, unless there has been obtained from the Commission a certificate that the present or future public convenience and necessity will permit of such abandonment.

The law does not clearly define the tests which the Interstate Commerce Commission is required to apply in determining whether or not there shall be any additional railroad construction or any abandonment of all or any portion of a line. The only condition precedent to the granting of such a certificate in the law itself is a finding "that the present or future public convenience and necessity require or will require the construction, or abandonment of the particular extension or line of railroad."

All applications for the issuance of any such certificate must be under the rules and regulations prescribed by the Commission at the time the application is made.

Upon receipt of any application for such a certificate the Commission sees that a copy of the application is filed with the

[1] For complete text of Paragraphs 18 to 20 of Section 1 see Appendix.

Governor of each state in which such additional or extended line of railroad is proposed to be constructed, or where all or any portion of a line of railroad is proposed to be abandoned. The purpose of this provision is to give the railroad commissions, public service or utility commissions, or other state authorities an opportunity to be heard before the Interstate Commerce Commission as to the merits of the application.

Because of the close relationship between interstate and intrastate railways, the differences resulting from the numerous state laws regulating the railways within each state, and because of the many jurisdictional disputes arising from such an interrelationship, the Interstate Commerce Commission has tried to follow the policy of observing state statutes, when such statutes are not in conflict with Federal laws. If the state statutes are in conflict with the Federal they are disregarded. However, section thirteen, paragraph three, of the Transportation Act of 1920 authorizes the Federal Commission to avail itself of the co-operation and services of state authorities, so that, if there is a conflict regarding the feasibility of permitting the construction or abandonment of a railway, the controversy may be removed by harmonious action without the need for appeal to the courts. More will be said in a later chapter of this relationship of state and Federal authority.

The Commission has the power to issue or refuse to issue any certificate or to grant or to deny it in part, or to place in the certificate such terms and conditions as in its judgment the public convenience and necessity may require. Upon the granting of a certificate, and not before, the railroad may, without securing approval other than that contained in the certificate, proceed with construction or abandonment under the terms and conditions specified in the certificate.

The power conferred upon the Commission is exclusive and plenary, and the Commission may through the issuance of supplemental orders modify the provisions of any previous order as to the purpose for which the certificate was issued. In this respect the Commission retains control of the carrier with regard to the

construction, or abandonment of the addition, or extension of the authorized line of railroad.

Any construction, operation, or abandonment contrary to the provisions of paragraph (18) to (20) may be enjoined by any court of competent jurisdiction upon suit brought by the United States, the Commission or by any regulating body of the state affected or by any party interested in such construction or abandonment. A penalty of not more than $5,000 or imprisonment for not more than three years, or both, is provided for any violation of the provisions, by any director, officer, agent or person, acting for or employed by the carrier who knowingly authorizes or consents to the violation of the provisions of paragraphs 18, 19 and 20 of Section I.

Since the Act of 1920 is designed primarily to promote good service Congress has recognized the need of encouraging new construction in the interest of public convenience by granting the Interstate Commerce Commission power under paragraph (18), Section 15a, to permit carriers, upon application, to retain all or any part of the excess income from the construction and operation of a new line of railroad for a period not to exceed ten years. This power is conditioned upon the completion of the work of construction within a period designated by the Commission in its order granting such permission to retain the excess earnings.

However, the authority granted to the Commission by paragraphs (18) to (20) of Section I does not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one state, or to street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.[1] More will be said, in a later chapter, of the problem of lack of jurisdiction over purely intrastate carriers.

[1] The Commission, in its annual report for 1928, page 83, has recommended that the present exemption provisions of paragraph (22) of Section 1 be amended by substituting provisions exempting all electric railways except such as interchange standard freight equipment with steam railways and participate in interstate freight rates with such carriers; provision to be made for exemption of particular electric railways falling within the excepted class, if upon application they are able to show to the satisfaction of the Commission, after notice and opportunity to be heard, that they are not affected with an important national interest so far as the provisions in question are concerned.

CHAPTER 3

Administration by the Interstate Commerce Commission

In order to handle successfully the administration of Section I, (18)-(20), of the Transportation Act, in so far as it deals with the problems of corporate management and finance, the Interstate Commerce Commission created a new department, a Bureau of Finance, under the supervision of Division 4 of the Commission, through which division most of the decisions administering the various phases of this part of the new law have been rendered. The Commission was authorized to function through the medium of divisions of not fewer than three members by an amendment to the Interstate Commerce Act, approved August 9, 1917.

The activities of the Bureau of Finance relate to six subjects of major importance: (1) authorizations of new railroad construction; (2) abandonment of existing lines of railroads; (3) regulation of security issues; (4) acquisition of control by one carrier of another not amounting to consolidation; (5) interlocking directorates; and (6) recovery by the United States of excess net railway operating income, and the administration of the general railway contingent fund created thereby.

In respect to each of these matters the administration by the Commission depends in large measure upon a determination by it of an issue of "public interest." This is the test which Congress has laid down for the Commission to apply. Thus, as a preliminary to the new construction or abandonment of a line of railroad, a certificate of "present or future public convenience and necessity" is required from the Commission. In cases of particular interest, whether because of precedent or importance of subject matter, the entire Commission participates in the decisions.

New Construction

The Bureau of Finance of the Interstate Commerce Commission issued an order on June 24, 1920, governing applications by carriers for certificates under paragraphs (18) to (20) of Section I with regard to certificates of public convenience and necessity

for the construction or extension of lines of railroad, and applications under paragraph (18), Section 15a, for permission to retain the excess earnings of newly constructed lines of railroad.

This order was superseded on January 22, 1924, by a new order. There is very little difference between the instructions of January 22, 1924, and those of June 24, 1920. Under the instructions of January 2, 1924, the applicants are obliged to furnish with their applications a detailed map describing the location of the proposed line and the territory it is proposed to serve. The purpose of this map is to define the route so that it may be properly described and readily traced on another map, and to show fully other geographic facts pertinent to a consideration of the case so as to indicate the relation of the proposed line to all common carriers, cities, railroad centers, rivers and lakes near the proposed route. There were also slight changes made in the instructions governing the filling out of the various forms required.

Under the revised order of January 22, 1924, all railroads seeking certificates of "public convenience and necessity" for the construction or extension of lines of railroad and permission to retain the excess earnings of the newly constructed line must make application to the Commission for such authority under the rules and regulations prescribed by the commission, and no carrier may proceed with the construction of such new line or extension until permission has been granted.

Railroads are obliged to set forth the following information in their applications:

a. Exact corporate name of the applicant.
b. Whether the applicant is (1) a carrier by railroad subject to the interstate commerce act, or (2) a corporation organized to construct and operate a railroad but is not an operating company.
c. Whether it is proposed to construct (1) a new line of railroad or (2) an extension of an existing line of railroad.
d. Applicant's general plan for financing the proposed construction, and applicant's relation, if any, traffic or financial, to any other operating or non-operating railroad corporation or corporations.
e. Whether permission is desired to retain the excess earnings derived from such new line of railroad or extension.

f. The reason, briefly stated, why the present or future public convenience and necessity require or will require the proposed construction. (Detailed reasons are to be reserved for the reply to the questionnaire hereto annexed.)

g. Name, title and postoffice address of counsel or official to whom correspondence in regard to application is to be addressed.

h. Date of incorporation, and government, state or territory, under the laws of which the applicant was organized. If incorporated under the laws of, or authorized to operate in, several states, give the facts in regard thereto.

i. Reference to action by stockholders or directors of the applicant authorizing the making and filing of the application, giving date and place of meeting.

j. Each state, and each county in such state, in which the proposed new line of railroad or extension will be situated.

k. The route and terminal of the proposed new line of railroad or extension, giving the name of each incorporated city or village through which such line or extension will pass.

l. The total number of miles of main track of the proposed new line of railroad or extension, and of each branch thereof.

m. Whether the applicant desires a hearing upon the application.

n. The application and each copy thereof shall be accompanied by a map drawn to scale. There shall also be furnished with the original application, but not incorporated therein, one tracing of such map on tracing linen. The purpose of this map is (a) to define the route of the proposed line, so that it may be properly described and readily traced on another map; (b) to show fully the geographic situation of the proposed line and its relation to existing railroad lines; and (c) to show, so far as limitations admit, other geographic facts pertinent to a consideration of the case. Towns, villages, large rivers or lakes, national parks or reservations should be shown, at least near the route. To orient the proposed line, a sufficient area should be covered, showing all common carrier railroads therein, and other data of recognized importance, such as large cities, important railroad centers, state boundary lines, etc. The limits of the area, which the applicant claims would be served, should be shown when possible. The map and each copy thereof shall be on a sheet 8 x 10½ inches, or a multiple of that size not larger than 16 x 21 inches, and folded to dimension. The proposed line should be shown in clear relief on the prints by color or otherwise.

The Commission further specifies the procedure governing the execution, filing, and subsequent disposal of the application.

The original application must be signed by an executive officer of the applicant having knowledge of the matters and things therein set forth which must be verified under oath.

The original application and nine copies for the use of the Commission, and two additional copies for each state in which will be situated any part of the proposed new line of railroad or extension, must be filed with the Secretary of the Commission, Washington, D. C. Each copy must bear the dates and signatures that appear in the original and must be complete in itself.

Upon receipt of the application, the Commission serves notice thereof upon, and files a copy with, the Governor and public service commission of each state in which any part of the proposed new line of railroad or extension will be situated, accompanied by an inquiry as to whether the Governor or other representative of the state desires to be heard in the matter. The applicant must publish at least once during each of three consecutive weeks in some newspaper of general circulation in each county, in which any part of the proposed new line of railroad or extension will be situated, notice of the filing of the application and its answers to a questionnaire which the Commission sent to the applicant and which requires the following information:

The essential facts relied upon to support the statement that the applicant is a carrier by railroad, engaged in the transportation of passengers or property, subject to the interstate commerce act, or is a corporation organized to construct and operate a railroad. Whether the proposed new line of railroad will be both constructed and operated by the applicant. Whether any corporation, individual, or trustee, holds control over the applicant at the date of filing this return. If control is so held: The form of control, whether sole or joint, or in trust. The manner in which control was established and the extent of control. The name and business address of the intermediary through which control was established and is exercised. The name and address of the beneficiaries, for whom the trust, if any, is maintained, and the purposes of the trust.

Whether the applicant is connected by common stock ownership, or otherwise, with any industry to be served by the proposed line.

Amount and kind of capital stock authorized and issued, for construction of the proposed line.

The chief purposes and functions of the proposed line. The classes of service to be performed, such as passenger, freight, express and switching, and the kind of motive power to be used.

Whether the proposed line will receive material revenue from the territory traversed, or serve any material public convenience and necessity of the local territory. If the answer is "no," the applicant may elect to omit answers to the following questions contained in parenthesis. (The name and population of each county in which the proposed new line of railroad will be situated. The names of places mentioned in the above that are now served by common carriers, and the name of each common carrier serving the several places. The name and population of each city, town and village (together with state and county in which located) having a population of 200 or more and lying within 10 miles of the proposed new line of railroad, but not entered thereby. The approximate distance in miles by highway from the nearest station on the proposed new line of railroad to each of the places enumerated. The general topography of the country through which the proposed new line of railroad will extend, indicating whether level, rolling, mountainous, cultivated, pasture, prairie, desert, rocky, timbered, or underlaid with minerals. The approximate area of the territory to be served, an estimate of the population therein, and of the area.

(1) in timber,

(2) in pasture and

(3) under cultivation.

The kinds of industry carried on in the area to be served. Main facts as to the future growth and permanence of such industries. Whether the chief support of the proposed new line of railroad will come from the general community or from some particular industry or industries, located or to be located in the area.)

Whether the proposed new line of railroad will be built primarily for a direct profit from railway operation, or for the advantage of any other industry or business, or if the proposed new line of railroad is an extension of an existing railroad, branch, connecting track or cutoff.

If the proposed new line of railroad is to be a connecting link between existing railroads, then the kind and volume of traffic, expressed in tons and carloads, that probably will be interchanged must be stated, together with the economies that will be effected by such interchange of traffic.

The manner in which it is proposed to finance construction and equipment, the kind and amount of securities to be issued, and the approximate terms of their sale. The extent to which funds for financing are available, and if any, if such securities will be underwritten by industries to be served by the proposed line.

An estimate, in detail, must be furnished of the character and volume of traffic expected and the gross revenue to be derived therefrom, covering each of the first five years following the completion of the proposed new line of railroad, together with an estimate of the annual revenue expected after the first five years. The part of the estimated traffic which will constitute net additional business developed or created by the construction of the proposed new line of railroad, and the part that will be diverted from existing railroads. The particular mining, timbering, manufacturing or other enterprises to be established contingent on the construction of the proposed new line of railroad and applicant's contractual or financial relation with the industry.

The dates on which it is expected to begin and to complete the construction of the proposed new line of railroad, and any additional reasons to show that the public convenience and necessity require the construction of the proposed line.

The returns to the questionnaire must be filed with the Commission not later than six weeks after they have been received by the carrier. Action will not be taken on the application, by the Commission, until after the return to the questionnaire sent to the railroad company has been received and satisfactorily completed in the manner prescribed by the Commission. Much delay

is often caused by having to send to the carrier for more information.

Certain exhibits must also be filed with the answers to the questionnaire sent out by the Commission, such as the engineer's report, the specifications as to construction, an estimate of the cost, and copies of the income account, if the applicant is a going concern, for the five years preceding the date of application.

Should the carrier desire to retain the excess earnings derived from such new construction as provided under paragraph (18), Section 15a of the Act, the reasons for such a desire must be fully stated.

The persons signing the returns to the questionnaire, or such other representatives of the parties as the Commission may designate, must, if so requested by the Commission, appear at any hearing that may be held and subject themselves to examination and cross-examination.

Upon receipt of the answers to the questionnaire sent out by the Commission to the applicant, copies are sent to each Governor and public service commission, or any other person designated by the Commission to whom a copy of the application was sent together with a second questionnaire to be answered by the individual receiving the answers to the questionnaire filed by the applying carrier.

The recipients of this second questionnaire are obliged to state whether they have any financial interest in the construction of the proposed line. The correctness in their opinion of the reasons stated by the applicant why the public convenience and necessity require the construction of the proposed line and their view of the manner in which the public interest would be affected. Information relative to the character and extent of industries in the area, and the effect of the proposed line upon these industries is requested, together with any other information they may deem relevant to the application, and whether or not they desire to be heard by the Commission on the merits of the application.

The original return and seven copies of the answers to this questionnaire must be filed with the Commission for its use, to-

gether with two additional copies for each State in which any part of the proposed new line of railroad will be situated.

Procedure Before the Finance Committee

The original application, answers to the questionnaires, and the exhibits filed with the answers to the questionnaires are checked in the office of the Commission in order to determine whether it complies with the regulations prescribed by the Commission. After the application is checked it is placed in the Commission's docket and forms part of the public record of the case. The remaining copies are used in various ways in the office of the Commission. One is used by the Bureau of Accounts for a check on such parts as may require it. Another is used by the Bureau of Securities for whatever action it may see fit to take. Another is used by the Engineering Bureau, so that a check as to the cost of the new construction may be made. These bureaus render a report of their findings to the examiner, to whom a particular application has been assigned, to aid him in reaching a decision.

After the examiner has investigated the application he submits a report of his findings, together with his suggestions as to what procedure should be followed, to the Commission, and whether or not the carrier should be allowed to retain the excess earning from the new line. Should the examiner find it necessary to conduct hearings on the application he is free to do so under the rules of procedure established by the Commission.

Upon the conclusion of his examination and the hearings, the examiner decides that the application should be granted or denied. If the application is denied, it is the practice of the examiner to submit a proposed report in which he states the reasons for his conclusions. This proposed report is served on the carrier in accordance with the rules of practice established by the Commission. The privilege is then given the carrier of filing exceptions to the report submitted by the examiner and arguing the matter orally before Division Four of the Commission. At the completion of the oral argument the Commission renders a report. If the members of the Commission comprising Division Four likewise refuse to grant the application the carrier may apply for a

rehearing before the Commission sitting as a whole. The judgment of the Commission so sitting is final. However, each case is dealt with by itself and on its own merits.

If a certificate is granted, the Commission may make such modification of the original application as, in its opinion, will best serve the public "convenience and necessity."

After the granting of an application for new construction the Commission keeps close check upon the progress of the work and the compliance of the carrier with the conditions set forth in the certificate. The carriers are required to report on these matters at periods specified by the Commission. Usually reports are required every six months. No modification may be made of the original order of the Commission without first giving notice to the parties or attorneys who appeared in the original case and until the Commission has given its consent to the proposed modification of its original order.[1] Should the carrier be unable to commence or complete the construction of the new line or extension within the time limit specified in the original order of the Commission, permission must be had, from the Commission, for an extension of the date of commencement or completion of the work and the establishment of a new time limit.[2] As a general rule, the Commission is not inclined to grant permission for a delay in commencing construction or in completing construction, effective at some distant date.[3]

Abandonment

At a session of the Bureau of Finance of the Interstate Commerce Commission held on July 8, 1921, the Committee issued an order governing applications by carriers for certificates of "public convenience and necessity" authorizing the abandonment of existing lines of railroad under paragraphs (18)-(20) of Section I.

Under the instructions of July 8, 1921, all railroads seeking certificates of "public convenience and necessity" for the abandon-

---

[1] Construction and Operation by L. & N. R. R., 124 I. C. C. 575.
[2] Oregon, California & Eastern Ry. Co., 124 I. C. C. 475.
Seaboard-All Florida Ry. Co., 124 I. C. C. 301; 656.
[3] Construction of Extension by San Benito & Rio Grande Valley R. R. Co., 124 I. C. C. 637.

ment of an existing line of railroad must set forth the following information in their application:

a. The exact corporate name of the applicant.
b. Whether the applicant is a carrier by railroad subject to the interstate commerce act.
c. Route and termini of the line covered by the application, naming each county in which any portion is situated, with its total length in miles.
d. Whether abandonment of the line itself, or merely of its operation, is sought.
e. If the line is in receivership, a brief history of the receivership.
f. Reasons, briefly stated, why the abandonment should be authorized. (Detailed reasons are to be reserved for the reply to the questionnaire hereto annexed.)
g. Name, title and postoffice address of counsel or official to whom correspondence in regard to the application should be addressed.
h. Government, state or territory under the laws of which the applicant was organized. If incorporated under the laws of, or authorized to operate in, more than one state, give the facts in regard thereto.
i. Reference to action by stockholders or directors of the applicant authorizing the making and filing of the application, giving date and place of meeting.
j. Whether the applicant desires a hearing upon the application.

The Commission further specifies the procedure governing the execution, filing, and subsequent disposal of the application:

The original application must be signed by an executive officer of the applicant and must be verified under oath.

The original application and five copies for the use of the Commission, and two additional copies for each state in which is situated any part of the line of railroad proposed to be abandoned, must be filed with the Secretary of the Commission, Washington, D. C. Each copy must bear the dates and signatures that appear in the original and shall be complete in itself.

Upon receipt of the application, the Commission serves notice thereof on, and files a copy of the application with, the governor and public service commission of each state in which any part of the line of railroad sought to be abandoned is situated, accompanied by an inquiry as to whether the governor or other representative of the state desires to be heard in the matter.

The applicant must publish a notice of the filing of the application at least once during each of three consecutive weeks in some newspaper of general circulation in each county in which any part of the line of railroad sought to be abandoned is situated.

The Commission then requires the applicant to answer a questionnaire which is sent out by the Commission and which requires the applicant to show:

When the line in question was constructed, for what purpose and its history as an operating unit from the time of construction up to the date of the application; the general history of any past or existing receivership covering the line; the investment cost of the line as shown by the applicant's books, stated as nearly as possible according to the primary accounts prescribed in the interstate commerce commission classification of investment in road and equipment.

Whether any aid, gift, grant or donation of anything of value was contributed in consideration of its construction.

The amount and description of any bonds, notes or other evidences of indebtedness resting in whole or in part upon the line in question, or upon the earnings thereof, or upon the earnings of any other line or lines of the applicant not covered by the application, and of any evidences of indebtedness now resting specifically upon the line in question, but which may be affected by the proposed abandonment. A copy of the applicant's general balance sheet as of the latest date for which such statement is available must be filed together with a copy of the applicant's income account for each of the five years next preceding the current year, and of such income account for that portion of the current year for which figures are available.

If the application covers less than the entire mileage operated by the applicant, the gross and net revenues and gross and net income for the portion sought to be abandoned, allocated thereto on a mileage pro rata basis must be filed.

The names of all cities and incorporated villages located upon the line in question, by counties, with the approximate population of each, and the source of the information as to such population, and the names of all other railroads serving them must be stated,

together with the distance in miles from another line of railroad of each city or village named.

The names of all railroads with which the line in question connects for interchange of traffic and the points of such connection and interchange must be listed. A statement of the tonnage handled by the line in question is required, classified by principal commodities, for each of the five years next preceding the current year, stating separately the tonnage (a) originating and destined to points on the line and (b) interchanged with connecting carriers and moving over other lines.

The nature of industries located in the territory tributary to the line is requested, such as farming, mining, lumbering, manufacturing, etc. The passenger traffic handled on the line in question for each of the five years next preceding the current year, giving separately the number of local and connecting line passengers and the revenue derived from each class. If the volume of traffic, freight or passenger, or both, has diminished during recent years, then the reasons which may be assigned for such decrease must be stated, together with the effort that has been made to dispose of the line in question so as to insure continued operation.

A tracing of the original map or a blue print showing the location and route of the line affected by the proposed abandonment, with its relation to other railroads and other common carriers in the same territory must be filed with the answers to this general questionnaire.

These returns to the questionnaire must be filed with the Commission as soon as practicable, but not later than six weeks after receipt of the questionnaire. Action will not be taken on the application until after the return to the questionnaire, satisfactorily completed in the manner provided by the Commission.

An original and five copies of the answers to the questionnaire must be filed with the Commission together with two additional copies for each state in which any part of the line of railroad proposed to be abandoned is situated. The Commission then sends a copy of the returns to the questionnaire to each governor

and public service commission to whom a copy of the application was sent.

The original application, answers to the questionnaire and all exhibits are then checked in the office of the Commission to see that they comply with the regulations prescribed by the Commission. Upon completion of the checking, the application is placed on the Commission's docket and becomes part of the public record of the case. The remaining copies of the application and answers to the questionnaire are distributed among the various bureaus of the Interstate Commerce Commission in essentially the same manner as are applications for new construction.[1]

Since the Commission can act on abandonment only in so far as it pertains to interstate commerce, as a practical matter a railroad which ceases to operate in interstate commerce can rarely, if ever, continue its intrastate operations at a profit and it may then resort to the courts for permission to abandon intrastate operations for protection against the confiscation of its property. Because of this conflict between interstate and intrastate commerce it becomes apparent that some means should be followed that will eliminate much of the uncertainty surrounding the abandonment of a line of railroad that is operating in interstate and intrastate commerce.

[1] See page 26 of this chapter.

CHAPTER 4

The Power of the Interstate Commerce Commission in Conflicts with State Authorities

The power exercised by the Interstate Commerce Commission under this new legislation has come primarily from the transference of the authority exercised formerly by the courts and the various state commissions to the Interstate Commerce Commission—a purely administrative body. Since the courts and state commissions originally exercised their jurisdiction over the entire construction and abandonment of a railroad property without regard to the interstate or intrastate character of the railroad it becomes evident that many conflicting court decisions and statutes have been rendered and enacted that tend to cause much misunderstanding between the Federal and state authorities as to the extent of their respective jurisdiction.

Since it was essential to build up a national transportation system that will not be divided into parts by state lines, Congress incorporated the co-operative provision in Section 13, Paragraph 3, of the Transportation Act of 1920, so as to weave together the various conflicting forces arising from the absence of a centralization of authority over the railroads of the United States.

The provision authorizes the Federal Commission to avail itself of the co-operation, services, records, and facilities of state authorities, so that if there is a conflict regarding the feasibility of permitting the construction or abandonment of a railway, the issue may be decided by harmonious action without the need for appeal to the courts. This provision in no way gives legal status to any joint hearings of State and Federal regulatory agencies. It simply gives the Commission the right to request the state authorities to act as its agents. Questions of state authority are not necessarily involved.

Moreover the provision does not require the Federal Commission to comply with the conclusions reached in the joint hearings. Congress has undoubtedly reserved to the Federal Commission the right to decide the problem in the event it was impossible to

arrive at a common understanding.[1] However, the Interstate Commerce Commission has enlisted the co-operation of the state commissions with mutually satisfactory results, in cases arising under the provisions of the Act of 1920, governing certificates of public convenience and necessity.

From 1921, when the Commission first availed itself of the co-operative provision, to 1928, the state commissions, at the request of the federal commission, held 253[2] hearings, transmitting to the Commission the records thereof together with their recommendations, and in the majority of the cases the Commission followed the recommendations of the state authorities.

However, in spite of this co-operative effort on the part of the Commission to eliminate confusion there has been much misunderstanding on the part of certain carriers and individuals as to the jurisdiction of the Commission and the states over the application of carriers for certificates. This is particularly true when an intrastate carrier makes application for a certificate directly to the Commission without regard to the existing state statutes regulating intrastate commerce. The states in opposing the applications of these carriers before the Commission maintained that since the applying carriers were railroads organized and existing under their laws, and not Federal corporations the Commission had no jurisdiction over the construction of a new line by the carriers for the extension of their intrastate business.

Upon the question of the respective jurisdiction of the Federal and state governments over intrastate carriers the Commission stated: "The fact that a proposed line of railroad was already in part constructed for use in intrastate commerce could have no bearing on its decision with regard to granting or denying a certificate for additional construction. So far as interstate commerce is concerned the proposed line does not exist."[3]

---

[1] Wisconsin Passenger Fare Case. 59 I. C. C. 391, 1920; Express Rate Case. 83 I. C. C. 606, 1923.

[2] Annual Reports of the Interstate Commerce Commission, Volumes 35-44.

[3] Construction of Line by Jefferson Southwestern Railroad, 86 I. C. C. 796, 799.

Construction of Line by Grand Prairie and Northern Railroad, 76 I. C. C. 437.

The Commission dismissed for lack of jurisdiction an application of a wholly intrastate line intending to engage exclusively in intrastate commerce.

The right of the Commission to refuse to interfere in any new construction by a purely intrastate carrier until the carrier begins to engage in interstate commerce was upheld by the Supreme Court in the case of Texas & New Orleans Railroad Company, Petitioner, v. The Northside Belt Railway Company, No. 231, when the petitioner sought to restrain the construction of a new line of railroad by the defendant on the ground that a certificate authorizing such construction had not been obtained from the Interstate Commerce Commission. Under the laws of Texas, Culliman secured a charter for the Northside Belt Railway Company with power to build and operate, as a common carrier, a terminal railway from a private plant to another local railroad. The line was to be about five miles long and wholly within the state. The Northside Company instituted proceedings in a Texas court to acquire by condemnation a right of way, for a short distance, over unused land owned by the Texas and New Orleans Railroad Company, an interstate carrier. Thereupon, the latter brought, under paragraph (18)-(22) of Section I of the Transportation Act, 1920, suit in the Federal Court of Southern Texas. The prayer was to enjoin the Northside Company from continuing the condemnation proceedings, and also from constructing, maintaining or operating the railroad over the plaintiff's land. This relief was sought solely on the ground that the defendant had not obtained from the Interstate Commerce Commission the certificate of public convenience and necessity prescribed in those paragraphs of the Transportation Act.

The restraining order applied for upon the filing of the bill was denied. The defendant answered that it was exclusively an intrastate carrier and as such was not subject to the Interstate Commerce Act. It appeared that, before this suit was begun, judgment had been entered in the condemnation proceedings, that the amount of the compensation awarded had been paid into court as provided by the law of the state, and that the Northside Company had entered into possession of the premises taken. It appeared that, before the process was served upon the defendant, the line had been constructed over the strip of land in question. And it also appeared that, at the time of the hearing, the line had not yet been completed; that the defendant had not engaged or offered

to engage in interstate commerce, and that it could not possibly engage in such commerce until the completion of its line.

The District Court found and held that the Northside Company was an intrastate carrier only; that its construction would not burden interstate commerce directly or indirectly; and that paragraphs (18)-(22) were not applicable to the construction of an intrastate railroad not yet engaging in interstate commerce. On that ground, the trial court denied the injunction and ordered the bill dismissed without prejudice to the right of the plaintiff "to hereafter apply for an injunction against the respondent if its activities in the future shall bring it properly within the purview of those paragraphs."[1]

The Circuit Court of Appeals affirmed the decree of the District Court and the Supreme Court likewise properly affirmed the decree of that court. Justice Brandeis, in rendering the decision said:[2] "The purpose of paragraphs (18)-(22) is to prevent interstate carriers from weakening themselves by constructing or operating superfluous lines, and to protect them from being weakened by another carrier operating in interstate commerce a competing line not required in the public interest."[3]

---

[1] 8 F. (2d), 153.

[2] See the Chicago Injunction Case, 264 U. S. 258.
Railroad Commission of California v. Southern Pacific Co. 264 U. S. 331.
Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy Railroad Company, 257 U. S. 563.
Colorado v. United States. 271 U. S. 153.

[3] In the following cases the Interstate Commerce Commission has granted or denied certificates of convenience and necessity for the construction and operation of a new line, by a corporation not heretofore a carrier subject to the Interstate Commerce Act, and lying wholly within the limits of one state:
Application of Michigan R. R. Co., 65 I. C. C. 480.
Application of Coon Bayou & Arkansas City Ry. Co., 65 I. C. C. 701.
Application of Uvalde & Northern Ry. Co., 67 I. C. C. 204, 554.
Application of Golden Belt R. R., 67 I. C. C. 370, 99 I. C. C. 135.
Application of Detroit & Ironton R. R. Co., 67 I. C. C. 600.
Application of Flint Belt R. R. Co., 70 I. C. C. 292.
Application of New Holland, Higginsport & Mount Vernon R. R., 71 I. C. C. 119.
Application of Kansas & Oklahoma Southern Ry. Co., 71 I. C. C. 130, 90 I. C. C. 349.
Application of Mingo Valley R. R. Co., 71 I. C. C. 139.
Application of Osage Ry. Co., 71 I. C. C. 160.
Application of Shreveport & Northeastern Ry. Co., 71 I. C. C. 586.
Construction of Line by Eastern Maine, 72 I. C. C. 39.

This attitude of the Commission in refusing to take jurisdiction over the granting or denying of a certificate for additional construction by a purely intrastate railroad, until the intrastate carrier engages in interstate commerce is quite sweeping because of the burden that might be placed on interstate commerce. It may be suggested that such a burden might well be found in the necessity, under continued intrastate operation, of the utilization of instrumentalities of interstate commerce, i.e., freight cars. Few, if any, short lines have an adequate car supply, and they rely generally on their connections to furnish the necessary freight car equipment under either a demurrage or per diem agreement. To recognize a new intrastate carrier and to allow it the use of such instrumentalities may well be a burden upon interstate commerce.[1]

This new departure in Federal regulation of the railroads of the country in so far as it relates to intrastate commerce was clearly stated by the Supreme Court in the Dayton Goose Creek Railway Case.[2] The court said among other things:

Construction of Line by Nashville & Atlantic R. R., 72 I. C. C. 655.
Construction of Line by Pacific Southwestern R. R., 76 I. C. C. 488.
Construction of Line by Utah Central R. R., 76 I. C. C. 737.
Construction of Line by Jefferson Southwestern R. R., 76 I. C. C. 737, 86 I. C. C. 796, 90 I. C. C. 512.
Construction of Line by Longview, Portland & Northern R. R., 79 I. C. C. 805.
Construction of Line by American Niagara R. R., 82 I. C. C. 420.
Construction of Line by Mississippian Ry., 82 I. C. C. 698.
Construction of Line by Rio Grande City Ry. Co., 90 I. C. C. 349.
Proposed Construction and Acquisition by Morgantown & Wheeling R. R. Co., 94 I. C. C. 372.
Proposed Construction of Line by Colorado, Columbus & Mexican R. R. 94 I. C. C. 676.
Construction of Line by Graham County R. R. Co., 99 I. C. C. 264.
Construction of Line by National Coal Ry. Co., 99 I. C. C. 569.
Proposed Construction of Detroit Connecting R. R., 105 I. C. C. 657.
Construction of Line by W. Pittston Exeter R. R., 111 I. C. C. 626.
Construction of Line by Cowell & Southern R. R. Co., 117 I. C. C. 1.
Construction of Line by Rio Grande, Neolithic & Northern Ry., 117 I. C. C. 19.
Construction of Line by Southern Kansas Industrial Belt Ry. Co., 117 I. C. C. 210.
Proposed Construction of Line by Perry & Southeastern Ry., 124 I. C.C. 341.

[1] Colorado & Southern Railway, 82 I. C. C. 310 (1923).

[2] Dayton Goose Creek Railway Company v. The United States et al., 263 U. S. 456.

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give owners of railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by the proper division of joint rates, and by fixing adequate rates for interstate commerce, and in case of discrimination, for intrastate commerce, to insure a fair return upon the properties of the carriers engaged. . . . When the adequate maintenance of interstate commerce involves and makes necessary on this account the incidental and partial control of intrastate commerce, the power of Congress to exercise such control has been clearly established."

Many state railroad commissions, particularly that of Texas, in applications of carriers for permission to abandon their lines, have contended that a carrier may not abandon its lines within the state until it has first received the permission of the state commission. In one of these cases[1] the Commission authorized physical abandonment and dismantling of an entire line of railroad within the state of Texas. The Supreme Court, however, set aside this order in so far as it authorized physical dismantling and abandonment in respect to intrastate operations, in the absence of a finding by the Commission that continued operation in intrastate commerce would be a burden upon interstate commerce.[2] Subsequent to this decision the Commission authorized only the abandonment of interstate operations except where the burden of continuing intrastate operations at a loss would be reflected in the accounts of an interstate carrier, in which event abandonment as to both interstate and intrastate operations has been authorized.[3]

[1] E. Texas Railroad Co. 65 I. C. C. 436
Abandonment of Colorado and Southern Railway, 82 I. C. C.. 310

[2] Texas v. E. Texas Railroad Co., 258 U. S. 204 (1922).

[3] After the decision of the Supreme Court in respect to the abandonment of the Eastern Texas Railroad, the company sought and secured an injunction from a federal district court enjoining interference with its abandonment of its intrastate operation. The court held that in the face of the abandonment of its interstate operations the railroad could not operate profitably in intrastate commerce and it was authorized to dismantle its lines. State of Texas v. Eastern Texas Railroad Company, 283 Federal 584. Affirmed in Supreme Court, October Term, 1923, Nos. 145, 146.

In a similar case[1] the Court had before it the question of the validity of an order of the Interstate Commerce Commission permitting the abandonment of a branch line by the Colorado and Southern Railway. The branch line was a narrow gauge railroad located wholly within the state of Colorado, and physically detached from other lines of the company, but it was operated in both intrastate and interstate commerce as a part of the Colorado and Southern system by means of connections with other railroads. The order was assailed as void since it authorized abandonment and discontinuance of operation of the line in intrastate traffic. In holding the contentions of the state without merit the court said:

"The Transportation Act of 1920 did not purport to take from the state its powers to control intrastate commerce. Nor did it confer upon the Commission power to release a corporation chartered by the state from its primary obligation to furnish service. If paragraph (19) of Section I should be construed as authorizing the Commission to do so without the consent of the state, the provision would be unconstitutional.

"The sole objective of paragraph (19) is the regulation of interstate commerce. Control is exercised over intrastate commerce only because such control is a necessary incident of freeing interstate commerce from the unreasonable burdens, obstructions, or unjust discriminations which are found to result from operating a branch at a large loss. Congress has power to authorize abandonment, because the state's power to regulate and promote intrastate commerce may not be exercised in such a way as to prejudice interstate commerce." The jurisdiction exercised by the Commission in this case is in essence that which was invoked in the Shreveport Case, a power to prevent unjust preference to particular intrastate shippers or localities at the expense of interstate commerce.

The primary jurisdiction of the Federal government and the state governments over the control of new construction or abandonment in the absence of a conflict between the two bodies is limited only by the fifth or fourteenth amendments to the United

[1] State of Colorado v. United States 271 U. S. 153.

States Constitution, which protect property rights. So far as the Federal government is concerned the prohibition is the fifth amendment, which provides also that private property shall not be "taken for public use without just compensation." The states are limited by the fourteenth amendment, which provides that no state shall deprive a person of property "without due process of law." Each of these rules defining confiscation and its application to the regulation of railroads has been a matter of judicial interpretation.[1]

[1] Smith v. Ames, 169 U. S. 466.
Excess Income of St. Louis & O'Fallon Railway Company, 124 I. C. C. 29.
Minnesota Rate Cases, 230 U. S. 352.

CHAPTER 5

Certificates for New Railroad Construction

The requirement of the Act of 1920 that a certificate of "public convenience and necessity" shall be required as a condition precedent to the construction and operation of a new line of railroad is based upon the finding that the "present or future public convenience and necessity" require or will require the construction of such extension or new line of railroad. This is the only test that Congress has laid down for the Commission to follow. In administering the law the Interstate Commerce Commission has not announced any definite formula as to the principles it follows in granting or denying a certificate.

The Commission, however, at a very early date ruled that the term "public convenience and necessity" meant the following:[1]

> "Public convenience and necessity implies both convenience and necessity since the words are not synonymous but must be given a separate and distinct meaning. Necessity does not exist unless the inconvenience would be so great as to amount to an unreasonable burden on the community. The words imply an 'urgent, immediate public need.'"

Such a ruling on the part of the Commission on the constituent elements of public interest may appear as the utilization of a legislative power by an administrative body, a power that Congress could not lawfully delegate to an administrative group. However, it is readily seen that such a ruling is not the utilization of a legislative power when the section is read and construed, as it should be, in the light of other sections of the Transportation Act of which it is a part.[2] So construed, the essential "public convenience and necessity" includes the following tests:

---

[1] Application of the Atlanta, St. Andrew's Bay Railway Company for a certificate of Public Convenience and Necessity, 71 I. C. C. 784.
Wisconsin Telephone Co. v. Railroad Commission, 162 Wis. 383, 156 N. W. 614 (1916).
Public Convenience application of Utah Terminal Ry., 72 I. C. C. 89.

[2] I. C. C. v. Goodrich Transit Co., 224 U. S. 144, 214, 215 (1912).

(1) Whether or not the proposed line of railroad would probably be a financial success without burdening its connections through its demands for excessive divisions of joint rates.

(2) Whether or not the proposed construction would result in a parallel and competing line of railroad which would satisfy only a local demand and interfere with the strengthening of existing railroads.

(3) Whether or not the proposed construction would complicate the consolidation of existing lines of railroad within the purview of Section 5 of the Act. In addition to any other definition of public interest in the Interstate Commerce Act, such as inhibition of the so-called Commodities clause, designed to divorce transportation systems from manufacturing and mining enterprises.[1]

The Commission in applying the first test that the extension or new construction be able to develop future earning power in excess of the cost incurred by the proposed construction has invariably approved such applications on a showing that the new line will be self-supporting.

However, the inability of the carrier to prove future earning power is not conclusive as to the denying of the carrier's application. The Commission in granting an application where the earnings would be insufficient for some time to sustain the project as an independent enterprise stated:[2]

"The problems in convenience and necessity cases have been intensified by uncertainty as to how the law should be interpreted. . . . Ability to earn is not the sole test of public convenience and necessity, although always a factor to be given consideration. When such ability is shown to exist a strong presumption may arise that public need for the new facility

---

[1] Sec. 1, par. 8, 34 Stat. at L. 385.

[2] Certificate of Interstate R. R., 65 I. C. C. 654.
Certificate of C. R. R. of N. J., 70 I. C. C. 4.
Certificate of K. & O. S. Ry., 71 I. C. C. 130.
also
Construction of Branch Line by L. A. & St. Louis R. R., 72 I. C. C. 746.
Construction of Line by Carbon County Ry., 76 I. C. C. 485.
Construction of Line by Kansas City So. Ry., 79 I. C. C. 161.
Construction of Line by North & South Ry., 86 I. C. C. 663.
Construction of A. E. R. R., 90 I. C. C. 732.
Construction of Line by A. & W. N. C. R. R., 111 I. C. C. 557.

exists. When not shown to exist, it may frequently be concluded that such need is too slight to warrant the expenditure necessary for the proposed construction. When it is established, however, that a project will render important service, and its sponsors are willing to assume the risk of loss in the expectation of ultimate gain either directly through the property or indirectly through benefits to themselves and to the shipping community, the requirements as to the public interest may be fully satisfied, although losses to investors seem more probable than gains. We are to consider what is best in order to foster, build and make efficient transportation facilities as a whole in the interest of the greatest number. Where only the private aspect is involved, individuals are at liberty to take risks. So far as the public is concerned, the advantages of new or better service may be so great as to justify increasing the burden upon shippers generally by the amount necessary to sustain the facility. If it should prove later, however, that the line, because of competitive conditions, lack of business, or other circumstances, can not be operated profitably under fair divisions and fair rates the burden of the loss would properly fall upon the investors and not upon the shipping public. Our approval of a new enterprise neither constitutes nor requires a finding that such enterprise will prove successful. Our responsibility is to determine the public interest involved in the construction of the line. . . . Prospective earnings or losses may properly be considered as one of the factors evidencing the public interest, but taken alone, do not determine whether a particular enterprise is or is not required by public convenience and necessity.

"A prospect for earnings not free from uncertainty may justify the granting of a certificate permitting the construction of a line, the subsequent abandonment of which may be authorized on demonstration of futility of the prospect."[1]

The conditions surrounding the financial aspect of a carrier may vary in different cases. Nevertheless a certainty of failure of a carrier to earn sufficient revenue to maintain properly the proposed new line may have effects different from uncertainty of earnings or as to the time when they are to be realized. Because of such inherent conditions the Commission is obliged to hear each case separately so as not to deny the public railroad facilities that will serve the public interest in an important way.

In considering these applications for new railroad construction the Commission keeps in mind the fact that according to the

[1] Construction of Line by Wenstchee Southern Ry. Co., 90 I. C. C. 257.

Transportation Act the railroad lines of the country as a whole, or of certain sections thereof, are entitled to a fair return on their property. Such being the case, it must be borne in mind that unremunerative operation of rail lines can not fail to produce an injurious effect upon the base of the general rate structure and upon equitable divisions of rates and to prevent certain carriers from earning a reasonable return.[1]

As to the second test that the extension or new line does not result in an unnecessary competing or parallel line, the Commission has stated:

> "In determining whether the construction of new railroad lines should be authorized, doubt should be resolved in favor of their construction, particularly where new territory not already supplied with railroad service is being opened up. But desire to avoid any undue restriction of enterprise ought not to lead us to approve new construction which involves needless, costly and wasteful duplication of existing facilities. That is what the law was intended to prevent.
>
> "Experience and observation have shown that a proposed new line of railroad is always desired by the people in the territory affected. If the expression of such desire is in itself a sufficient reason for the granting of a certificate, then the law might as well permit unlimited construction. Plainly there must be other evidence that public convenience and necessity require a line."[2]

Where it is not proposed to open up any new territory, but to build an additional line of track parallel to and in close proximity to an existing single or double track railroad, which is providing good service, and is not being used to its capacity, merely because the additional line proposed would give a greater flexibility of service to the community, such a proposal, for a new line of track, has not been looked upon with favor by the Commission. A policy of granting such petitions would undoubtedly result in much unnecessary third tracking of many double-track lines operating through manufacturing districts. Carried to a logical conclusion such unnecessary paralleling of existing lines would re-

---

[1] Application of Michigan Northern R. R., 72 I. C. C. 21.
Construction Application of National Belt Line Ry., 71 I. C. C. 556.
Construction of Extension by Wyoming Ry., 86 I. C. C. 707.
Proposed Construction by C. C. & M. R. R., 94 I. C. C. 676.

[2] Construction of Piedmont & Northern Ry., 138 I. C. C. 363, 1927.

sult in a heavy increase in the transportation burden upon the people of the country with no appreciable benefit to the nation or to any existing line of railroad.

The Interstate Commerce Commission, in denying the application of the New York, Pittsburgh & Chicago Railroad for a certificate of public convenience and necessity for the construction of a new low grade railroad of 283 miles across the state of Pennsylvania at a cost of $260,000,000 directly connecting New York and Pittsburgh for through traffic between New York and the West, and which would shorten the distance between New York and Pittsburgh by 76 miles, remarked that although the record shows that the proposed line would have great advantages over existing routes, and that the need for a more direct route is recognized by all, such conditions are not sufficient to establish fully its economic justification. "Such justification must depend upon the extent to which savings in transportation costs will afford a return upon the capital necessary to effect that saving." Moreover, the Commission stated, "when the construction of such a superline is required or justified it should be undertaken by and in the joint interest of the existing carriers which through a series of years have developed the country to be served, and not by a new aggregation of capital which would simply compete for the business already developed."[1] Although the Commission did not expand this point it is readily seen that such a thought is in harmony with the spirit of the Act of 1920.

However, in cases where it appears that the benefit to the territory to be served by the proposed parallel line outweighs the injury which may result to the line paralleled, the Commission has followed the principle that the prosperity of the community should be subserved and that the interests adversely affected by the new line would receive compensating benefits from such increased prosperity which would in part offset the direct losses suffered by the presence of a competing carrier.[2]

---

[1] Railway Age, Vol. 78, No. 15, p. 667.

[2] Construction Application of Michigan Northern R. R., 65 I. C. C. 480.
Certificate of Tennessee Railroad, 65 I. C. C. 654.
Application of Coon Bayou & Arkansas City Ry., 65 I. C. C. 701.
Public Convenience Application of Golden Belt R. R., 67 I. C. C. 370.
Public Convenience Certificate to Idaho Central R. R., 70 I. C. C. 265.

In applying the third test, that the proposed construction not complicate the consolidation of the existing lines of railroad, the Commission has constantly kept in mind the need to build up a system of railroads prepared to handle promptly all the interstate traffic of the country without unnecessary waste of resources, the burden of which may fall upon the public. In a joint application of the Detroit and Ironton Railroad Company and the Detroit, Toledo and Ironton Railroad Company[1] the Commission was asked for a certificate of public convenience and necessity for the acquisition and operation of the Detroit, Toledo & Ironton Railroad under paragraph 18 of section I, or if that part of the application was denied, for authority under paragraph 6 of section 5 of the Act to consolidate the properties of the Detroit and Ironton and the Detroit, Toledo and Ironton Railroad Company for common ownership, management and operation. These lines were physically detached from each other and at a period previous to the above application the Commission was asked for a certificate by the Detroit and Ironton for permission for the construction of a line of railroad, approximately 55 miles in length, to connect physically the two railroads.[2]

It was contended on the part of the applicants that through physical connection, complete double tracking of the lines and their electrification they could be more efficiently operated as a single line and would constitute a trunk-line railroad occupying

---

Construction Application of National Line R. R., 71 I. C. C. 556.
Construction Application of Shreveport and Northeastern R. R., 71 I. C. C. 586.
Construction of Line by Eastern Maine R. R., 72 I. C. C. 39.
Construction of Line by G. P. & N. R. R., 76 I. C. C. 437.
Construction of Extension by T., A. & G. R. R., 76 I. C. C. 593.
Construction of Extension by Virginian Ry., 79 I. C. C. 631.
Construction and Operation of U. S. L. Ry., 82 I. C. C. 651.
Construction of Extension by Wyoming Ry., 86 I. C. C. 707.
Proposed Extension of Line by San Antonio Southern Ry., 86 I. C. C. 608.
Proposed Construction of Line by C., C. & M. R. R., 94 I. C. C. 676.
Construction of Extension by M. W. R. R., 111 I. C. C. 377.
Proposed Construction of Reader R. R., 131 I. C. C. 51.
Construction by Piedmont & Northern Ry., 138 I. C. C. 362.
Construction of Mound City & Eastern Ry., 138 I. C. C. 553.

[1] Consolidation of Detroit, Toledo and Ironton and Detroit and Ironton Railroad, 124 I. C. C. 117.

[2] Construction of Line by Detroit and Ironton Railroad, 90 I. C. C. 502.

a strategic position in the territory southward from Detroit and other Michigan cities which would avoid passing through the frequently congested Toledo, Columbus and Cincinnati Gateways. The Commission in denying the application ruled:—

Paragraph (18) of section 1, paragraph (2) of section 5, and paragraph (6) of section 5, of the Interstate Commerce Act were simultaneously enacted in the transportation act of 1920,[1] and by that statute inserted in the Interstate Commerce Act. Paragraph (6) is designed to enable the consolidation of railroad properties for common control, management and operation in conformity to a comprehensive plan to be adopted and published by the Commission.

While the Commission has agreed upon a tentative plan of consolidation as provided in paragraph (5) of section 5, the complete plan has not yet been adopted. Pending adoption of the complete plan, paragraph (2) enables unions of railroad properties in ways not involving consolidations, subject to prior authorization. In paragraph (8) of section 5 it is provided that carriers affected by any order made by the Commission under paragraph (2), or paragraph (6) are thereby relieved from the operation of the "anti-trust laws," and of all other restraints or prohibitions by law, state or Federal, in so far as may be necessary to enable them to do anything authorized or required by such order. Paragraphs (18) to (22) of section 1 contain no reference to relief from the operation of antitrust laws, etc. This fact is sufficient to denote fundamental differences in the intent and purposes of the provisions of paragraph (18) from the provisions of paragraphs (2) and (6). The Commission is of the opinion that any proposed union of railroad properties capable of accomplishment neither under paragraph (2) of section 5, because involving consolidation within the meaning thereof, nor under paragraph (6) of section 5, because the requirements of paragraph (5) have not yet been fulfilled, can not be accomplished under the provisions of paragraph (18) of section 1 of the Interstate Commerce Act because those provisions are inapplicable in the premises.

[1] Transportation Act of 1920, sections 402 and 407.

The Commission realizes that a certain amount of interference with competition is involved in nearly every railroad combination that may be formed either through formal consolidation or by means of additional connections. If this interference is not unduly great and if effective competition is preserved at all important points, and particularly if the tendency of the combination is to increase and promote other competition to compensate for that destroyed or lessened by the combination or additional connection, the Commission usually looks with merit upon the application if it is otherwise shown to be in the public interest. But in cases in which no such conditions are present the Commission has invariably refused to approve the application.

The Commission has constantly refused to grant a certificate for new construction if an intercorporate relationship was disclosed between industrial interests and the new railroad corporation proposing to construct a line of railroad in a territory already well supplied with transportation facilities. In denying such applications the Commission holds:

"Control over or affiliation with a short line railroad by an industry furnishing a large volume of traffic opens the door to grave abuse, particularly when the short line connects with more than one trunk-line railroad. By playing one connection against the other they have frequently been able to gain concessions in divisions, or in car supply, or in other matters which have in practical effect amounted to a preference of, or rebate to, the controlling or affiliated industry. Many such cases have taken our time and attention in the past, and they continually arise. . . . While the abuse has been limited by our regulation, it is doubtful whether it has been abated."[1]

These evils of interrelation between transportation lines and industries which they serve are manifest. Such arrangements breed privilege and preference and run counter to the spirit, and, in many cases, the letter of the law and in no manner do they serve the public interest.

---

[1] Construction of Line by Jefferson Southwestern R. R., 76 I. C. C. 778.
Construction and Operation of Line by Arkansas Short Line, 82 I. C. C. 651.
United States v. Lehigh Valley R. R. Co., 220 U. S. 257.
Construction by Piedmont & Northern Ry. Co., 138 I. C. C. 401.

In some instances in which the Commission refused to grant a certificate it was pointed out that the financial plans and arrangements were inadequate and indefinite. In these cases the Commission usually divides the applications for certificates into two groups: those made by financially strong and well established railroad concerns, and those sponsored by small independent companies. In the former cases the Commission usually approves the plans submitted by the carrier with little or no questioning as to the form of financing incidental to the granting of the certificate for the new construction. In the latter cases, although the Commission may have approved the proposed construction, the financial plans were checked very closely and made to conform to the requirements of the Commission. Such a procedure is quite necessary for many of these roads are entirely dependent upon their own earnings and can not rely upon a parent or subsidiary company to make up any shortcomings, should the expected revenues not be realized.[1]

In a number of cases the Commission has issued certificates for the construction of branch lines to provide transportation facilities for new coal, oil or ore developments.[2] However, in one case, Division 4 of the Commission denied a certificate for the construction of an extension to reach a proposed coal development for reasons quite different from those generally given. The Virginian Railway Company[3] filed an application for permission to construct a branch line 1.19 miles in length in West Virginia to serve coal mines and timber lands about to be opened by the Pocahontas Fuel Company. The Commission denied the application for the reason that the applicant was unable to furnish an adequate supply of coal cars ordered by mines already opened and under operation which were dependent wholly or in part for their supply of cars upon the applicant carrier. The opening of the new mines would not, therefore, increase the coal supply. In fact, it would reduce it unless the applicants' car supply were greatly increased.

---

[1] Public Convenience Certificate of W. F. & S. R. R., 67 I. C. C. 184.
[2] Application of P. & W. V. Ry. Co., 67 I. C. C. 736.
Application of K. & T. Ry. Co., 67 I. C. C. 450.
Virginia & Western Extension, 72 I. C. C. 485.
Construction of Louisville & Nashville R. R., 124 I. C. C. 581.
[3] Construction of Extension by Virginia Ry., 79 I. C. C. 631.

The Commission pointed out that there are at present more mines in the country than are consistent with the most efficient use of carriers' equipment, and the opening of new mines would tend to aggravate the situation and make the problem of car distribution a still more serious and troublesome one.

However, the full Commission on rehearing the case reversed the decision of Division 4 and issued the certificate[1] on a finding that the applicant in the immediate past had been unable to supply a sufficient number of cars because of the extraordinary demand for coal from the applicants' territory, the effects of a strike in the unionized coal fields, and the recent railroad strike which had made it difficult to maintain the carrier's equipment properly, thus reducing the normal supply of coal cars.

The Commission in this case showed a marked tendency to pass on the necessity for natural resource development. Such a policy is in keeping with its announced attitude as to what is the "public interest" in the promulgation of rules governing ratings of coal mines.[2] In these rules the Commission doubts if it would be in the public interest to give to high grade, favorable circumstanced coal fields and mines a monopoly of production, even if lower costs to consumers would follow. Such a course, the Commission holds, would result in first completely exhausting the best portion of a natural resource and would weaken our national position by compelling utilization of, in even greater degree, the poorer, less economical raw products, until in the end the country would have nothing left but the lowest grade, most costly, resources, with none of the higher grades for any of the special purposes which are so dependent on such resources. "Widest possible equable use of resources of all qualities, rather than forced use of most readily accessible highest grades," is what the Commission feels is consonant with the public good.

In keeping with this attitude the Commission refused to grant a certificate for the construction of a line of railroad from Clinchfield to Perry in Houston County, Georgia, for the development of substantial deposits of kaolin, fuller's earth and lime-

[1] Construction of Extension by Virginia R. R., 86 I. C. C. 27.
[2] Rules Governing Ratings of Coal Mines, 95 I. C. C. 309 (334).

stone located near the proposed line, on a finding that "there is no record to show immediate need for these resources."[1]

Since the authority of the Commission conferred by paragraph (18) of section 1 of the Act of 1920 does not extend to the construction of spur, industrial, team, switching or side tracks located or to be located wholly within one state, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation, there has been much uncertainty as to what comprises a spur or industrial track under the meaning of the Act.

The Federal Court for the Southern District of Texas where a proposed track was to be built from a station on an interstate railroad, seven and one-half miles long and to cost about $500,000 with long side tracks, though designed solely for the purpose of securing carload shipments from large industrial plants now tributary to another line, held that the line was not an "industrial track" but an "extension" requiring a certificate of authority from the Commission.

The court further held that it is the province of the court, in a suit for an injunction, to determine whether the proposed construction is an extension or an industrial track, and that question need not first be determined by the Commission; but that the burden of proof is on the carrier to show the right to construct the track without authority from the Commission.[2]

In another case the Commission held that a section of railroad extending from a station on the main line, three and one-half miles long, to tap the industrial section of a city, the needs of which were adequately served by another road, by the necessary laying of seven and one-half miles of track and two spurs, each approximately a mile long, is an extension within the meaning of the Transportation Act of 1920, requiring a certificate from the Commission for its construction.[3]

---

[1] Perry and Southeastern Ry. Co., 124 I. C. C. 341.
Construction of Lines by San Antonio & Mexican Ry., 90 I. C. C. 597.
Proposed Construction by Reader R. R., 131 I. C. C. 51.
[2] Lancaster v. G., C. & S. F. Ry. Co., 298 Fed. 488 (1924).
[3] T. & R. Ry. Co., Case supra. (1926).

However, the court for the fifth circuit held that a proposed track to be connected with sidetracks of five industrial plants was an "industrial track" and not an "extension." In this case the court defines an "industrial track" as one connecting with a main line track and used and equipped for moving freight in carloads to or from one or more industries thereby reached and served, in incidental services such as loading, reloading, or storing, and in incidental switching or yard movements.

It was further held in this case that courts in construing the statute can not consider whether the industrial track will cause duplication of railroad services and invested capital in railroad property, since courts can not give descriptive words in a statute's narrower meaning than such words had at and prior to the date of enactment.[1]

The Commission in several applications for the construction of short stretches of track denied the application on the ground that such railroads were essentially plant facilities and could not be classed, therefore, as common carriers. No authority to build such lines of railroad was necessary because they were outside the jurisdiction of the Interstate Commerce Commission.

Since the Transportation Act of 1920 aims to stimulate and encourage railroad extensions and construction in those sections of the country where additional railroad facilities are required to meet adequately the needs of the public, the Interstate Commerce Commission is empowered to permit railroads, upon application, to retain for a period not exceeding ten years the excess earnings derived from the operation of such newly constructed lines or branches.[2] In the majority of cases the carriers have not asked for such permission in their applications. The Commission has, however, granted the request of most of the carriers to retain their excess earnings from the new line on a finding that the probable cost of construction might not permit of an adequate return on the new line during the early years of operation.

However, the majority of applications for certificates of public convenience and necessity for the construction of new lines have

[1] C. C. & S. F. Ry. Co. v. T. & P. Ry. Co., 4 Fed. (2a), 904.
[2] Transportation Act, 1920, Sec. 15A., Paragraph 18.

not made it necessary for the Commission to rule, in detail, on the various elements that go to make up the public interest. Moreover they have been uncontested and handled largely as routine matter by the Commission.

From the time the Interstate Commerce Commission assumed jurisdiction on May 28, 1920, to October 31, 1928, 397 applications were filed with the Commission for certificates of public convenience and necessity for the construction of 16,469.85 miles of railroad lines and branches. The Commission issued 272 of these, covering 6,621.77 miles; 49 applications for the construction of 4,321.65 miles were denied, while 38 applications for the construction of 1,931.20 miles of line were withdrawn by the applicants and 12 applications for the construction of 905.30 were dismissed by the Commission. The applications, authorizations, denials, withdrawals and dismissals are shown by years in Table I.

Although applications requesting permission to build 16,469.85 miles of railroad were filed, authority was granted to construct only 6,621.77 miles, or 40.2 per cent. of the proposed mileage. Of the total mileage authorized approximately 3,424.10 miles of road or 51.7 per cent. had been constructed by the carriers receiving the authorizations.[1]

TABLE I

CERTIFICATES FOR NEW CONSTRUCTION[2]

Year[3]	Applications Filed		Certificates Issued		Applications Denied		Applications Withdrawn		Applications Dismissed	
	No.	Miles of Road	No.	Miles of Road	No.	Miles of Road	No.	Miles of Road	No.	Miles of Road
1920	2	155.50	1	43.50	1	102.00	..	.....	..	.....
1921	39	462.36	20	405.00	5	92.75	..	.....	..	.....
1922	53	2,941.28	27	446.33	6	259.35	7	175.4	..	.....
1923	50	2,914.51	28	881.59	2	15.75	2	19.0	..	.....
1924	42	2,564.66	26	1,318.35	7	2,298.60	4	271.54	3	143
1925	73	3,512.50	46	908.84	3	234.03	6	363.74	2	40.20
1926	51	1,280.52	52	1,573.70	10	503.12	6	307.88	..	.....
1927	41	1,257.73	39	1,027.27	10	593.86	5	319.19	3	402.00
1928	46	1,380.79	33	719.19	5	222.19	8	474.45	4	320.10
Total	397	16,469.85	272	6,621.77	49	4,321.65	38	1,931.20	12	905.30

[1] Annual Report of Interstate Commerce Commission, 1928, p. 3.

[2] Annual Reports of Interstate Commerce Commission, 1920-1928.

[3] A number of applications disposed of during each year were pending on October 31st of the preceding year because of the delay incidental to compiling of the Annual Reports of Interstate Commerce Commission.

The purposes for which the proposed new construction was undertaken are classified in Table II.

TABLE II
NEW CONSTRUCTION[1]

Purposes of Construction	No. of Authorizations	No. of Miles	Per Cent. of Mileage
Agricultural Activity	81	3,806.92	57.5
Rerouting of Lines and Trackage Changes	108	1,732.55	26.2
Timber Development	26	419.86	6.3
Mining Development	32	349.07	5.3
Oil Development	11	180.94	2.7
All Others	14	132.43	2.0
Total	272	6,621.77	100.0

Agricultural activity has been the principal purpose for which new railroad construction has been undertaken in 81 of the applications approved by the Commission. It comprised 57.5 per cent. or 3,806.92 miles of the authorized construction. Rerouting of lines to shorten hauls, to eliminate grades and to relieve terminal congestion together with track changes has accounted for 26.2 per cent. or 1,732.55 miles of new construction in the 104 cases approved. The desire to develop promising timber tracts was responsible for 6.3 per cent. or 419.86 miles in 26 applications approved. Mining development of coal, copper, iron and other minerals accounted for 5.3 per cent. or 349.07 miles of the new construction undertaken in the 32 cases authorized, while the development of oil fields, in 11 applications approved, contributed 2.7 per cent. or 180.94 miles of the total. All other proposed construction such as spur tracks and industrial sidings accounted for 2 per cent. or 132.43 miles of the entire new mileage proposed in the 14 applications that received the authorization of the Interstate Commerce Commission.

The average length of new railroad construction authorized by the Commission was 24.34 miles. Table III classifies, as to length, the various authorizations.

[1] Compiled from Finance Reports of Interstate Commerce Commission, 1920-1928.

TABLE III[1]

Length of Line	Number of Lines	Per Cent.
0- 9 miles	121	44.4
10-19 miles	44	16.2
20-29 miles	27	9.9
30-39 miles	20	7.4
40-49 miles	15	5.5
50-59 miles	12	4.4
60-69 miles	7	2.6
70-79 miles	3	1.1
80-89 miles	3	1.1
90-99 miles	3	1.1
100 miles and over	17	6.2
Total	272	100.0

The predominate authorizations are those for short mileage projects, those of less than 10 miles constituted 44.4 per cent., and those of 10 to 19 miles in length 16.2 per cent., construction of over 100 miles comprised 6.2 per cent. of the total. The longest line authorized was for the North and South Railway, 322 miles, and which extended from Miles City, Montana, to Caspar, Wyoming.

The location of the new railroad mileage authorized by the Commission is shown in Table IV. This table is divided first into the three major railroad districts of continental United States, and secondly according to the various geographical divisions. Authority was granted for new railroad construction in every state except nine: Connecticut, Delaware, Iowa, Massachusetts, Maryland, Minnesota, New Hampshire, North Dakota and Vermont.

[1] Compiled from Finance Reports of Interstate Commerce Commission, 1920-1928.

TABLE IV

NEW RAILROAD CONSTRUCTION
1920-1928[1]
GRAND TOTAL, 6,621.77

Eastern District	756.05
New England	112.40
Maine	112.40
New Hampshire	.....
Vermont	.....
Massachusetts	.....
Rhode Island	.....
Connecticut	.....
Middle Atlantic	106.63
New York	23.06
New Jersey	11.54
Pennsylvania	72.03
East North Central	537.02
Ohio	127.48
Indiana	50.53
Illinois	225.37
Michigan	140.24
Wisconsin[2]	3.40
Southern District	1,384.82
South Atlantic	1,224.65
Delaware[3]	.....
Maryland[3]	.....
Virginia[3]	71.25
West Virginia	111.00
North Carolina	58.26
South Carolina	124.00
Georgia	51.00
Florida	819.14
East South Central	150.17
Kentucky	59.55
Tennessee	28.15
Alabama	224.85
Mississippi	276.62
Western District	4,426.15
West North Central	394.60
Minnesota	65.05
Iowa	.....
Missouri	16.91
North Dakota	.....
South Dakota	133.20
Nebraska	62.50
Kansas	126.94
West South Central	1,710.18
Arkansas	50.32
Louisiana	156.30
Oklahoma	315.07
Texas	1,188.49
Mountain	1,320.81
Montana	588.10
Colorado	76.50
New Mexico	100.00
Arizona	15.00
Idaho	266.86
Wyoming	111.40
Nevada	18.42
Utah	144.53
Pacific	1,000.56
Washington	185.48
Oregon	521.98
California	293.20
Alaska	38.75
Hawaii	16.00

[1] Compiled from Finance Reports of Interstate Commerce Commission, 1920-1928.
[2] Western part of Wisconsin is in Western District.
[3] Delaware, Maryland and northern part of Virginia are in Eastern District.

One of the interesting facts brought out in this analysis is that except for Maine, no new railroad mileage was authorized in the New England States, and that but 106.63 miles were authorized for the Middle Atlantic States. Of the total authorized mileage for the United States the mileage of the Eastern District amounted to but 11.4 per cent. or 756.05 miles, of which 537.02 miles were contained in the East North Central States.

The authorized mileage of the Southern District amounted to 20.9 per cent. of the total for the country as a whole, or 1,384.82 miles. The State of Florida held authorizations for 819.14 miles of the Southern District.

The Western District contributed 67.7 per cent. of the total authorized mileage of the country, or 4,426.15 miles, of which 1,188.49 miles were authorized for the State of Texas.

There were authorized in twenty-one states projects in excess of 100 miles of which Texas led with a total of 1,188.49 miles, followed by: Florida 819.14 miles; Montana 588.10 miles; Oregon 521.98 miles; Oklahoma 315.07 miles; California 293.20 miles; Mississippi 276.62 miles; Idaho 266.86 miles; Alabama 244.85 miles; Illinois 225.37 miles; Washington 185.48 miles; Louisiana 156.30 miles; Utah 144.53 miles; Michigan 140.24 miles; South Dakota 133.20 miles; Ohio 127.48 miles; Kansas 126.94 miles; Maine 112.40 miles; Wyoming 111.40 miles; West Virginia 111.00 miles, and New Mexico 100.00 miles.

It is significant to observe, however, that by classifying the density of new railroad construction in the various railroad districts according to 100 square miles of territory, or on a basis of 10,000 population, as is shown in Tables V and VI,

TABLE V

New Railroad Construction per 100 Square Miles of Territory Since 1920

Railroad Districts	Miles per 100 Sq. Mi.	New Const. per 100 Sq. Mi.	Per Cent. Increase Since 1920
Eastern District	17.80	.128	.0071
Southern District	8.79	.254	.0288
Western District	5.94	.206	.0348

TABLE VI

NEW CONSTRUCTION PER 10,000 POPULATION SINCE 1920

Railroad Districts	Miles per 10,000 Pop. 1920	New Const. per 10,000 Pop.	Per Cent. Increase Since 1920
Eastern District	14.56	.143	.0098
Southern District	22.80	.65	.0285
Western District	40.20	1.40	.0348

that the Western District has the greatest percentage increase in new railroad construction since 1920 of any railroad district in the United States. For every 100 square miles of territory in the Western District there was an increase in density of .0348 per cent. over that of 1920 while the Southern and Eastern Districts had increases of but .0288 per cent. and .0071 per cent., respectively. While for every 10,000 of population in the Western District an increase of .0348 per cent. in railroad mileage was enjoyed as compared with but .0285 per cent. and .0098 per cent. for the Southern and Eastern Districts.

This is a natural development. The Western District in 1920 had but 5.94 miles of railroad for every 100 square miles of territory, while there was 8.79 miles and 17.80 miles of railroad for every 100 square miles of land area in the Southern and Eastern Districts.

CHAPTER 6

Certificates for Abandonment of Railroads

The Interstate Commerce Commission in its control over railroad abandonment is guided by the requirement of the law that no carrier by railroad, subject to the Act, shall abandon all or any portion of a line of railroad unless and until there has been obtained from the Commission a certificate that the present or future public convenience and necessity permit such abandonment.

The finding of a condition that "the present or future public convenience and necessity permit such abandonment" is the only condition that Congress has laid down for the guidance of the Commission in the administration of the requirement.

Since the Act of 1920 aims to have the Commission exercise that fostering guardianship and control of the railways of the United States that will secure for the people of the country a well balanced railway system the Commission has made use of the following test in considering applications for the abandonment of all or any portion of an existing line of railroad.

"Whether or not the carrier has the financial ability to continue operations."

In applying this test the Commission has authorized abandonment in all cases where the railroad has made proof of the facts that would have entitled it to relief in the courts prior to 1920.[1]

However, the Commission early held that it is incumbent upon a carrier seeking to abandon a line of railroad to establish by clear and convincing proof every element of the case from which the Commission is expected to determine that the present or future

---

[1] Public Convenience Certificate to Ocean Shore R. R., 67 I. C. C. 760.
Public Convenience Certificate to Idaho Central R. R., 70 I. C. C. 266.
Abandonment of Lines of Alabama & Mississippi R. R., 70 I. C. C. 531.
Abandonment of Barnegat R. R., 79 I. C. C. 506.
Abandonment of Line by Chicago, Rock Island & Pacific Ry. Co., 90 I. C. C. 15.
Abandonment of Eastern Kentucky Ry. Co., 111 I. C. C. 416.

convenience and necessity will permit of the proposed abandonment.[1]

Mere inability of a carrier to operate a branch line at a profit was held to be insufficient justification for abandonment where the carrier was making a return from its operations as a whole.[2]

It is interesting to note in denials of this nature that the Commission regularly warns the people who are interested in the continued operation of a branch, that is proposed to be abandoned and especially those protestants who are dependent upon the road, that they must realize that they have a duty to perform and that the future of the branch rests largely in their hands. The mere desire to have a railroad is not enough. There must exist the will to co-operate in its operation and to support it adequately. If the people or protestants prove unwilling to co-operate with such reasonable economies in service as may be feasible, or if they resort, where no necessity exists, to other carriers or to other forms of transportation, then the Commission feels that the applicant will be justified in renewing its request for authority to abandon its line.

In the abandonment of the Hawkinsville and Florida Railway[3] the Commission declined to extend this rule of refusing to allow the abandonment of a branch of a railroad line where the carrier was making a return from the operation of its lines as a whole, to include the returns from operations of affiliated or parent companies, "since that view would disregard the rights of the minority." It further stated, "nor do we think the question of profit and loss is a matter to be passed upon by the courts alone. Such a construction of paragraph (18) of section 1 would condemn the provision on constitutional grounds, since any refusal on our part to consider operating losses might very well, in cases like the present one, result in a denial of the application so that the

[1] Abandonment of Pere Marquette, 72 I. C. C. 303.

[2] Public Convenience Application of G. B. & W. Ry., 70 I. C. C. 251.
Abandonment of Brancy by Pere Marquette, 72 I. C. C. 267.
Abandonment of Line by Kansas So. Ry., 79 I. C. C. 431.
Abandonment of Frankfort & Cincinnati Ry., 86 I. C. C. 637.
Proposed Abandonment of Lincoln Branch by Detroit & Mackinac Ry., 94 I. C. C. 624.

[3] Hawkinsville & Florida Ry., 70 I. C. C. 566.
Puget Sound Traction Co. v. Reynolds, 244 U. S. 547.

effect of the paragraph would then be to require the carrier to continue to operate at a loss, and amount to confiscation."

The Commission, however, in granting a certificate to the Duluth and North Minnesota Railway, which had failed to earn enough to pay the expense of running its trains, for the abandonment of its line of railway over the protest of the state authorities, which contended that the duty of the Commission was merely "to make a finding with respect to the bare need of service, unaffected by how far the need is evidenced by the payment forthcoming for the service rendered," stated that in case a line can not be operated without financial loss such a condition is "cogent evidence that public convenience and necessity does not require it to be kept in operation."[1]

Where it can be shown that present losses in operation may result in savings to the carrier through abandonment of a part of a main line which parallels the main line of a competing railroad and where the applicant has made arrangements for the joint use of the remaining main line of the competing carrier, which would work no appreciable hardship upon the surrounding communities, the Commission has authorized abandonment of the line over the protest of the communities located along the line to be abandoned. In granting such permission the Commission said: "The construction of two parallel railroads was a wasteful duplication of transportation facilities; that the joint operation of one line wherever possible, would adequately serve the transportation requirements and that the economies resulting therefrom would ultimately inure to the benefit of the territory traversed as a whole."[2]

But if a carrier wished to abandon a line, in order to effect a saving in operating and maintenance expenses the abandonment of which would deny the communities located along the line the present competitive advantages they enjoy through the competition existing between the wholesale and jobbing houses located in the territory, and which would result in the community served

---

[1] Public Convenience Certificate to D. & N. M. Ry., 71 I. C. C. 795. Jack v. Williams, 113 Fed. 283.

[2] Abandonment of Part of Line by Oregon Trunk Ry., 72 I. C. C. 679. Abandonment of Branch Line by P. M. Ry., 90 I. C. C. 100.

locally paying higher freight rates by way of longer routes, the Commission was unable to find that the present or future public convenience and necessity permitted the abandonment.[1]

Although it has been held that a carrier cannot be compelled to carry on even a branch of its business at a loss in cases involving the confiscatory character of rates,[2] a railroad that continues to exercise the power conferred upon it by a state charter, may be required by the state to fulfill an obligation imposed by the charter, even though fulfillment in that particular may cause a loss.[3]

The Commission, in denying the application of a carrier that wished to abandon a line of railway with a mileage of 40.80 miles and eight branches involving a total length of 75.6 miles because of the losses in traffic due to the closing down of distilleries and the competition of motor vehicles on the highways[4] held that while operation of the line in the past had resulted in substantial losses, results of operation for the present (1923) showed a marked improvement, which should continue with the adoption of a more aggressive policy to get more business on the part of the applicant.

Where the Interstate Commerce Commission finds that increased effort on the part of a carrier, making application for the abandonment of its lines because of insufficient traffic, will result in the carrier obtaining a greater share of the available traffic and probably result in the conversion of present operating deficits into a profit on the investment in the property, the Commission has invariably required the carrier to follow such a policy before final judgment is passed on the application. This is particularly true when economies can be effected through a reasonable curtailment of services and the adoption of more efficient methods of operation. The policy adopted in such cases is in keeping with the constant desire of the Interstate Commerce Commission to protect the rights of private capital invested in the

---

[1] Abandonment of Branch Line by Great Northern, 72 I. C. C. 25.
[2] Northern Pacific R. R. Co. v. N. Dakota, 236 U. S. 585.
[3] Missouri Pacific R. R. Co. v. Kansas, 216 U. S. 262.
Abandonment of Detroit, Bay City and Western Railroad, 94 I. C. C. 666.
[4] Abandonment of Franklin & Cincinnati Ry., 86 I. C. C. 749.

railroad property; the guarding of the interests of local people and industries located along the line proposed to be abandoned, and the preservation of the general welfare of the country which is entitled to a well organized and efficiently operated railway system.

From the time the Interstate Commerce Commission assumed jurisdiction of certificates of public convenience and necessity for the abandonment of existing lines of railroad, May 28, 1920, until October 31, 1928, 396 applications for the abandonment of 7,094.22 miles of railroad were filed with the Commission, of which 321 certificates covering 4,892.23 miles of road or 68.96 per cent. of the total mileage proposed for abandonment were granted. At the same time, 27 applications for the abandonment of 366.79 miles or .5 per cent. of the total mileage to be abandoned were denied. The remaining applications were either withdrawn by the applicants or dismissed by the Commission. The disposal of these applications for abandonment is shown in Table I.

TABLE I

RAILROAD ABANDONMENT APPLICATIONS[1]

Year[2]	Applications Filed No.	Applications Filed Miles of Road	Certificates Issued No.	Certificates Issued Miles of Road	Applications Denied No.	Applications Denied Miles of Road	Applications Withdrawn No.	Applications Withdrawn Miles of Road	Applications Dismissed No.	Applications Dismissed Miles of Road
1920	9	97.00	3	34.27	2	25.73	1	17.00	.	.....
1921	40	909.13	31	702.00	2	37.01	.	.....	.	.....
1922	47	808.46	30	526.53	5	78.82	5	100.44	.	.....
1923	36	964.94	19	523.41	1	1.50	11	138.19	.	.....
1924	52	949.82	30	453.83	3	69.13	4	49.68	.	.....
1925	57	883.21	46	651.97	1	14.66	2	82.12	1	66.00
1926	46	937.19	49	592.56	5	73.30	5	100.26	2	30.90
1927	56	792.26	52	830.61	6	106.92	3	46.67	2	121.67
1928	53	752.21	61	587.05	2	59.72	4	28.39	.	.....
Total ..	396	7094.22	321	4892.23	27	366.79	35	563.05	5	218.57

The principal causes leading up to the abandonment of railroads are shown in Table II. In some cases the conditions surrounding abandonment are somewhat complicated. However, the absence of

[1] Annual Reports of Interstate Commerce Commission, Volumes 34, 35, 36, 37, 38, 39, 40, 41, 42.

[2] A number of applications disposed of during each year were pending on October 31st of the preceding year.

sufficient traffic to make operations profitable is in almost every case the fundamental cause of the abandonment.

TABLE II

REASON FOR ABANDONMENTS[1]

Reasons for Abandonment	No. of Authorizations	Abandoned Mileage	Per Cent. of Mileage
Exhaustion of Timber	105	1643.45	33.6
Exhaustion of Mines	55	893.92	18.2
Highway Competition	53	738.20	15.0
Insufficient Traffic	33	660.61	13.7
Railroad Competition	34	479.63	9.8
Rearrangement of Tracks	28	272.02	5.5
Exhaustion of Oil	7	86.50	1.7
All Others	6	117.90	2.5
Total	321	4892.23	100.0

The primary reason for abandonment in the United States since 1920 has been the exhaustion of timber resources. This one factor accounted for 105 of the 321 certificates issued by the Commission and represented 1643.45 miles, or 33.6 per cent., of the total authorized abandonments.

A case in point will illustrate this primary cause. The Commission on October 21, 1921, authorized the Alabama and Mississippi Railroad Company to abandon 75.5 miles of its line of railroad extending between Vinegar Bend, Alabama, and Pas Cagoula, Mississippi.[2] The territory traversed by the road consisted largely of cut-over timberlands, and most of the road's traffic consisted of forest products with little agricultural or passenger traffic. For the five years preceding 1920 operations resulted in a net deficit. The line had fallen into poor physical condition and large expenditures for repairs were required to bring the track to a state of normal maintenance. At the time of the application the road was in the hands of a receiver. The receiver reported that there was no hope of future profitable operation of the road and that there was no justifiable reason for continued operations. No objections were made to the proposed

[1] Compiled from Finance Reports of Interstate Commerce Commission, 1920-1928.

[2] Abandonment of Lines of Alabama and Mississippi R. R., 70 I. C. C. 531.

abandonment and an order to that effect was issued by the Commission.

The second reason for abandonment has been the exhaustion of mines for the extraction of such minerals as coal, copper, iron, silver, gold, etc. This factor was responsible for the issuance of 55 certificates and accounted for the abandonment of 893.92 miles or 18.2 per cent. of the total authorized. To illustrate this cause the receiver for the Chicago and Eastern Illinois Railroad was granted a certificate for the abandonment of the Chicago and Indiana Coal Railway Division of the said railroad on May 10, 1922.[1] The coal road extended from Brazil to Newton, Indiana, a distance of 162.1 miles, and was originally constructed for the marketing of bituminous block-coal which constituted 70 per cent. of all the coal originating on the road. At the time of application there was practically no block-coal handled by the road and the coal fields reached by the road were substantially worked out and there was little opportunity for development of other traffic. Moreover the road was in poor physical condition because of under maintenance and lightness of rail and it had constantly incurred net operating deficits, so that there was no justifiable reason for its continued operation.

The third origin of abandonment was the presence of highway competition from motor trucks and passenger automobiles. This condition resulted in the granting of 53 authorizations for the abandonment of 738.20 miles or 15 per cent. of the total. The abandonment of the Chicago, Peoria & St. Louis Railroad authorized December 18, 1922, is the outstanding example of the effects of highway competition upon the railroads.[2] The road extended from Pekin to Grafton, Illinois, a distance of 234.3 miles and was originally constructed to develop the agricultural and mineral resources of the area. The railroad was located in a highly competitive territory and when the railroad was turned back to the owners at the end of Federal control it was in poor physical condition and needed large reinvestments in road bed and equipment to make the road safe for operation. During the year prior to the filing of the application a concrete road was completed between

[1] Abandonment of Line by C. & E. I. R. R., 71 I. C. C. 609.
[2] Abandonment of Chicago, Peoria & St. Louis R. R., 76 I. C. C. 801.

East St. Louis and Peoria, substantially paralleling the entire length of the main line. Both passenger and freight revenues suffered severely because of this competition which when coupled with the poor physical and financial condition of the road caused increased operating deficits to occur until operation was impracticable and maintainable only by further dissipation of capital resources.

The fourth cause of abandonment is insufficient traffic. This factor was responsible for the granting of 33 applications covering the abandonment of 660.31 miles or 13.7 per cent. of the total authorizations. In the abandonment of the Macon and Birmingham Railroad decided December 9, 1926, insufficiency of traffic is well seen. The road extended from Solfee to La Grange, Georgia, a distance of 96.6 miles. It was originally built in the late eighties by the Macon Construction Company which contemplated building a number of railroads radiating from Macon in Georgia and into other states. From about 1891 to 1922 the road passed through successive receiverships and reorganizations until operation was discontinued by order of the court upon a showing by the receiver of insufficient funds for making necessary repairs for safe operation or to pay for fuel. Past traffic was never sufficient to pay the operating expenses of the road and future prospects offered no hope that the road would ever be operated at a profit; thereupon the Commission granted the application for its abandonment.

Railroad competition is the fifth reason for abandonment, of the total number of certificates issued 34 were for this cause, covering 479.63 miles of railroad or 9.8 per cent. of the total authorizations. The effect of railroad competition is seen in the abandonment of a branch line by the Chicago, Rock Island and Pacific Railroad issued May 2, 1924.[1] This branch extended from Guthrie to Chandler, Oklahoma, a distance of 34.2 miles. It was originally constructed in 1902 as a part of a proposed interstate line extending to the coal and oil fields in the eastern part of Oklahoma and to Colorado and New Mexico, but the remainder of the line was never constructed. The line was closely paralleled

[1] Abandonment of Branch Line by Chicago, Rock Island & Pacific Ry., 90 I. C. C. 15.

on the south for its entire length by the Fort Smith and Western Railway at distances ranging from less than a mile up to 7 miles. The Atchison, Topeka & Santa Fe Railway paralleled it on the north for about 20 miles at an average distance of 6 miles. Passenger and freight traffic was comparatively light and had decreased considerably in the past year, because of this railroad competition, causing the branch to be operated at a heavy loss. Since there was not sufficient public necessity for the branch to justify its continued existence and operation and as adequate railroad facilities were afforded by existing carriers the Commission authorized the abandonment on the grounds that the line was a drain upon the treasury of the applying carrier and was a burden upon the public at large.

The rearrangement of tracks, brought about by the lowering of grades, the elimination of congestion, the shortening of routes, the removal of grade crossings, etc., was the sixth reason for abandonment. Twenty-eight applications were granted for this purpose comprising 272.02 miles or 5.5 per cent. of the authorized abandonments. This cause is seen in the application of the Great Northern Railway Company which on June 15, 1927, was granted a certificate to abandon its track between Berne and Scenic, Washington, a distance of 17.94 miles.[1] This abandoned line was replaced by a new line between the same points over a different route and extended but 10.29 miles in length. The new line resulted in a shorter and improved through route to the Pacific coast, and the elimination of all snowsheds, and also effected substantial savings in maintenance and operation costs.

The exhaustion of oil, and "all other reasons" such as the conversion of a steam railway into a local rapid transit line or the construction of a highway upon the existing right of way of a carrier accounted for the remaining causes for abandonment which comprised but 86.50 miles and 117.90 miles respectively of the total mileage abandoned in the United States.[2]

[1] Construction and abandonment of Lines by Great Northern Railway Company, 124 I. C. C. 685.

[2] Public Convenience Certificate to Atchison, Topeka & Santa Fe Ry. Co., 70 I. C. C. 377.
Abandonment of Branch Line by N. Y., Ny. & H. R. R., 90 I. C. C. 3.
Abandonment of Line by Buffalo, Rochester & Pittsburgh Ry. Co., 90 I. C. C. 691.

The average length of railroad abandoned during this period from May 28, 1920, to October 31, 1928, was 15.24 miles. Table III shows the number of lines, authorized to be abandoned, grouped according to their respective lengths.

TABLE III

LENGTH OF ABANDONED RAILROAD[1]

Length of Line	Number of Lines	Per Cent.
0-9 miles	176	54.8
10-19 miles	82	25.6
20-29 miles	28	8.7
30-39 miles	8	2.5
40-49 miles	7	2.2
50-59 miles	8	2.5
60-69 miles	2	0.6
70-79 miles	3	0.9
80-89 miles	0	0.0
90-99 miles	5	1.6
100 miles and over	2	0.6
Total	321	100.0

Short mileage projects, those of less than 10 miles in length, constituted 54.8 per cent. of the total authorizations granted by the Commission. Lines averaging 10 to 19 miles in length accounted for 25.6 per cent. of the abandonments, while 8.7 per cent. of the certificates were for lines ranging from 20 to 29 miles in length. The remaining authorizations, those of 29 to 100 miles in length, comprised but 10.9 per cent. of the total authorizations granted by the Commission. The largest single railroad abandonment, of the country, was that of the Chicago, Peoria and St. Louis Railroad which abandoned 234.3 miles of line extending from Pekin to Grafton, Illinois.[2]

These abandonments were not limited to any particular section of the country. They took place in every state except four. There were no abandonments in the states of Delaware, Kansas, Rhode Island and Vermont during this period. The location of these various abandonments is shown in Table IV. This table is divided according to the three major railroad districts of the United States, and is also in keeping with the various geographical divisions to which they belong.

[1] Compiled from Finance Reports of Interstate Commerce Commission, 1920-1928.

[2] Abandonment of Chicago, Peoria and St. Louis R. R., 76 I .C. C. 801.

TABLE IV

ABANDONMENTS[1]

GRAND TOTAL, 4,892.23

Eastern District	1,854.31	Western District	1,951.48
New England	144.91	West North Central	309.92
Maine	18.54	Minnesota	127.65
New Hampshire	35.34	Iowa	92.67
Vermont	.....	Missouri	54.09
Massachusetts	77.73	North Dakota	5.
Rhode Island	.....	South Dakota	23.51
Connecticut	13.30	Nebraska	7.00
		Kansas	.....
Middle Atlantic	232.54	West South Central	717.37
New York	74.94	Arkansas	142.19
New Jersey	15.44	Louisiana	297.13
Pennsylvania	142.16	Oklahoma	140.51
East North Atlantic	1,476.86	Texas	137.54
Ohio	449.03	Mountain	507.94
Indiana	127.95		
Illinois	289.58	Montana	93.89
Michigan	419.13	Colorado	120.76
Wisconsin[2]	191.17	New Mexico	72.80
		Arizona	42.45
Southern District	1,086.44	Idaho	.....
		Wyoming	72.15
South Atlantic	628.01	Nevada	93.58
		Utah	12.31
Delaware[3]	.....		
Maryland[3]	2.50	Pacific	416.25
Virginia[3]	18.30		
West Virginia	27.61	Washington	119.68
North Carolina	99.58	Oregon	31.22
South Carolina	40.05	California	265.35
Georgia	307.68		
Florida	132.29	Alaska	.....
East South Central	458.43	Hawaii	.....
Kentucky	32.27		
Tennessee	53.58		
Alabama	102.28		
Mississippi	270.30		

[1] Compiled from the Finance Reports of Interstate Commerce Commission, 1920-1928.

[2] The eastern part of Wisconsin is in the Eastern District.

[3] Delaware, Maryland and the northern part of Virginia are in the Eastern District.

It is interesting to note from this analysis that of the total 4,870.77 miles of railroad abandoned in the United States since 1920, the smallest abandoned mileage is found in the New England states where but 144.91 miles or 2.97 per cent. of the total authorized abandonments took place. Massachusetts with 77.73 miles of abandoned railroad contributed the greater part of the total for New England.

The largest significant abandoned mileage occurs in the East North Atlantic States where 1,476.86 miles or 30.3 per cent. of the total abandonments of the country took place. The railroads of the state of Ohio, which is in this group, abandoned 449.03 miles of line, representing the greatest total abandonment of any state in the country. The state of Michigan holds second place in importance of abandonment with 419.13 miles.

However, the Western Railroad District leads in the total number of miles abandoned, according to the three major railroad divisions. A total of 1951.48 miles or 40 per cent. of the authorized abandonments took place in this district. The greater part of this total occurring in the West South Central States, where 717.37 miles of railroad were abandoned, of which 297.13 miles were in the state of Louisiana.

The Eastern Railroad District was the second railroad division in importance of abandonment, 1854.31 miles or 38.0 per cent. of the total for the country being found in this territory.

The Southern Railroad District contributed the least number of abandoned miles with but 1086.44 miles or 22 per cent. of the authorizations. The South Atlantic States were responsible for 628.01 miles of this total of which 307.68 miles were in the state of Georgia.

In twenty-one states, there was authorized a total abandonment in excess of 100 miles. Ohio led with a total of 449.03 miles, followed by: Michigan 419.13 miles; Georgia 307.68 miles; Louisiana 297.13 miles; Illinois 289.58 miles; Mississippi 270.30 miles; California 265.35 miles; Wisconsin 191.17 miles; Arkansas 142.19 miles; Pennsylvania 142.16 miles; Oklahoma 140.51 miles; Texas 137.54 miles; Florida 132.29 miles; Indiana 127.95

miles; Minnesota 127.65 miles; Colorado 120.76 miles, and Washington 119.68 miles.

However, by comparing the density of railroad abandonments, in the United States on a basis of 100 square miles of territory or according to 10,000 of population, in the various railroad districts, with the density of railroad mileage in these districts in 1920, as is shown in Tables V and VI, it is found that the greatest percentage increase in abandonment took place in the Eastern District. For every mile of railroad per 100 square miles of territory, in the Eastern District in 1920, .0241 per cent. was abandoned, in contrast with .0224 per cent. and .0168 per cent. in the Southern and Western Districts. At the same time, for every mile of railroad in 1920 in the Eastern District, per 10,000 population, .0241 per cent. was abandoned as against .0224 per cent. and .0154 per cent. in the Southern and Western Districts.

TABLE V

RAILROAD ABANDONMENT PER 100 SQUARE MILES OF TERRITORY SINCE 1920

Railroad Districts	Miles per 100 Sq. Miles 1920	Abandonment per 100 Sq. Miles	Per Cent. of Abandonment Since 1920
Eastern District	17.80	.429	.0241
Southern District	8.79	.197	.0224
Western District	5.94	.090	.0168

TABLE VI

RAILROAD ABANDONMENT PER 10,000 POPULATION SINCE 1920

Railroad Districts	Miles per 10,000 Pop. 1920	Abandonment per 10,000 Pop.	Per Cent. of Abandonment Since 1920
Eastern District	14.56	.351	.0241
Southern District	22.80	.512	.0224
Western District	40.20	.618	.0154

Much of this difference in railroad abandonment in the Eastern District can be explained by the great amount of abandonment taking place because of increased highway competition arising from the tremendous road development in this section of the country. Moreover, many of these railroads were originally constructed to tap the various natural resources in the territory. With the exhaustion of many of these resources and the failure of other traffic to develop there was no longer need for the operation of such roads and the Commission authorized their abandonment.

CHAPTER 7

Conclusions

Throughout the administration of this provision of the Transportation Act of 1920, discussed in this study, the Commission's primary function in each case was to find whether or not the "public interest" would be served before granting a certificate of convenience and necessity for the construction of a new line of railroad or the abandonment of an existing line. In the control of this new phase of corporate management of the railroads in the United States, many tests have been applied by the Commission to determine the constituent elements of "public interest" to which the statute refers. In the main these tests show that the Commission will issue a certificate for the construction of a new line if in its judgment the proposed line will be a financial success; or that the new line will permit the development of areas which would otherwise be retarded; or that it will facilitate the movement of through traffic; or aid in the elimination of terminal congestion, the lowering of grades or the renewal of grade crossings.

However, the Commission has denied certificates for the construction of new lines that could not possibly meet operating expenses, to say nothing about earning profits; or where the proposed line would result in a needless paralleling of a competing line of railroad; or where the line contemplated would complicate the consolidation of existing railroads or violate any other definition of public interest contained in the Act.

These tests, as applied by the Commission, seem as a whole to be in harmony with the provisions of the Transportation Act of 1920, compatible with the public interest, and in keeping with the broader basis of railroad regulation the aim of which is to foster, build and make efficient transportation facilities as a whole, and in the interest of the greatest number. In every way the Commission has tried to prevent the construction of short lines, or rival lines which have no hope of ultimate success and which

in the past have been the main cause of the so-called weak roads. To allow the construction of such lines would be contrary to the desire of Congress to organize the railroads of the United States efficiently and to consolidate them into a limited number of competing systems in such a way as to enable rates to be satisfactorily adjusted and all railroads to be operated on a profitable basis.

No effort is made on the part of the Commission to deny purely private interest the liberty to take risks in entering the railroad business or in rendering a transportation service, when it is established that a project will render important service, and its sponsors are willing to assume the risk of loss in the expectation of ultimate gain either directly through the property or indirectly through benefits to themselves and to the shipping community. This is as it should be for private initiative has been in the past the basis of our economic progress. However, this right of individuals to take risks must not be such as to burden shippers generally by the amount necessary to sustain the private venture. The Commission has taken a firm and justifiable stand in cases of distinct conflict between private interests and public interests, by stating that should the private venture prove later because of competitive conditions, lack of business, or other circumstances, to be unable to operate profitably under fair divisions and fair rates the burden of the loss must fall upon the investors and not upon the shipping public. This attitude, on the part of the Commission, has in practically every case where doubt has existed as to the probable success of the new railroad been sufficient to discourage any additional effort on the part of the sponsors of the new project to seek the fulfillment of their individual desire.

In certain instances the tests applied by the Commission may be open to grave objections should they be reviewed by the courts, for they have no relation to the rights and duties of the Commission as contained in the Act. Such an instance is the refusal of the Commission to grant a certificate for the construction of a line to develop certain mineral resources on a finding that there was no apparent need for their development. Congress does not appear to have intended to give the Commission a purely discretionary power in this regard, and as the Act now stands the

exact limits of the Commission's power over the control of the development of the resources of the country remain to be determined by the courts. This is undoubtedly a condition to be avoided. The development of the resources of the United States is dependent upon the existence of transportation facilities for their distribution throughout the nation and it would be well within the public interest if Congress should definitely grant to the Commission the power to determine the order in which the resources of the country should be developed by giving the Commission power to grant or deny such enterprises access to railroad facilities. By granting such a power the uneconomic and wasteful exploitation of the resources of the country, which has marked much of the early development of the United States, could be checked. Moreover, there would be a liberation of the capital which flows into these unwarranted and unnecessary developments for the encouragement and growth of industries now suffering because of the diversion of capital into such needless exploitations. How this is to be worked out some other writer must tell.

The Interstate Commerce Commission, under the present statute, may, by withholding a certificate, prevent the operation of a new line in interstate commerce but not in intrastate commerce. In like manner, under the car service sections of the Interstate Commerce Act, it may prevent the use of cars and locomotives of railroads, subject to the Act, by carriers operating in intrastate commerce. Theoretically these powers may constitute deterrents to those who would undertake new railroad construction without securing a Federal certificate, but as a practical matter, they fail to deal adequately with the real source of difficulty. When a new railroad is actually constructed and operated in intrastate commerce, it may be more embarrassing to refuse it permission to operate in interstate commerce than it would have been to prevent its construction altogether. The major part of the investment by the public has already been made, and the local demands for the issuance of a certificate become much more insistent than they were before such a railroad was built. Unless the Commission can prevent construction in such cases the practical benefits of the statute to the general public may be greatly impaired. Indeed,

the Commission has said that "a railroad once built ordinarily must be operated and permitted to earn a living." In spite of this limitation, however, the Supreme Court has upheld the right of the Interstate Commerce Commission to prescribe intrastate rates in order to remove unjust discriminations against interstate commerce. Congress doubtless has the power to authorize the Interstate Commerce Commission to prevent unnecessary railroad construction as an incident to the effective control of interstate commerce. Nevertheless, the history of the development of the transportation system of the United States has proved the futility of allowing disputes to arise between the State and Federal Governments without any effort on the part of Congress to correct the condition until it has become a subject of bitter dissension in defense of "States' Rights."

In the regulation of certificates of convenience and necessity for the abandonment of existing lines of railroad, Congress has placed upon the Commission a greater task for the protection of the "public interest." The Commission in administering this phase of the Act has permitted railroads to surrender the rights granted by their charter because of their financial inability to continue operation. This condition has arisen because the natural resources have become depleted or exhausted; or the traffic was not what was expected; or because business conditions had changed.

In recent years the inability of certain railroads to get sufficient freight and passenger traffic to continue profitable operation has been accentuated by the increased development of highways throughout the United States and the ever-growing utilization of these highways by motor-trucks and passenger automobiles.

Highway competition and its effects on railroad abandonment make it incumbent upon Congress to give greater consideration to the need of regulating motor competition. Failure to recognize this fact may result in the repetition of "cut-throat competition" so prevalent during the construction of many of the railroads of the country during the period prior to the enactment of the Interstate Commerce Act in 1887. Many of the rail carriers have no protection against the inroads on their traffic by these new transportation agencies, due to the absence of rate regulation and state

control of highway carriers in many sections of the country. Unless this condition is corrected Congress may defeat one of the prime purposes of the Act of 1920, the solving of the problem of the "weak roads" by allowing the creation of a new generation of "weak roads" through the potency of this ever-growing carrier on the highways.

The Commission, in many cases, has found it far from the interest of the public to permit railroad abandonment, when the cities and industries located along the lines would be denied reasonable and adequate transportation facilities. In keeping with this desire to protect the interest of the public the Commission has repeatedly refused to allow abandonment of a road where the operation of the system as a whole has been profitable. Still when the Commission has found that to require the carrier to continue to operate at a loss would amount to confiscation of the carrier's property the abandonment of the line has been permitted, even though the line may be primarily an intrastate carrier.

However, the right of cities and industries to continue to enjoy adequate transportation facilities rests largely in their hands, and a mere desire to have a railroad is not enough. There must exist the will to co-operate in the operation of the railroad and to support it adequately. This co-operation and support entails acceptance of all reasonable economies of service as are necessary for the continued operation of the railroad, and the obligation to refrain from patronizing other forms of transportation where no necessity exists for such patronage.

The gain by this new provision of the Transportation Act of 1920 appears to have been the transferring of primary jurisdiction from the courts to an administrative body. In certain respects this has resulted in delay and circumlocution of action. The courts originally exercised a jurisdiction over the entire abandonment of a railroad property without regard to the interstate or intrastate character of the operations, protecting property rights under the Fifth and Fourteenth Amendments respectively. But the jurisdiction of the Commission is confined to interstate operations and it can authorize total abandonment only on a finding that continued intrastate operation will burden interstate commerce. As a practical matter, a railroad which ceases to oper-

ate in interstate commerce can rarely continue operation in intrastate commerce at a profit, and it may then resort to the courts in its abandonment of its intrastate lines for protection against the confiscation of its property. This, however, involves both delay and multiplicity of actions.

Should Congress decide to correct this, together with the other problems mentioned in these conclusions which it undoubtedly could, it would be in keeping with the broader basis of Federal control, for most carriers are chartered to engage in both intrastate and interstate commerce. The same instrumentalities serve both, and the two services are inextricably intertwined. The extent and manner in which one is performed necessarily affect the performance of the other. Efficient performance of either is dependent upon the proficiency of the transportation system as a whole.

Nevertheless, in spite of the conditions arising in connection therewith, the exercise of Federal power over the construction of new lines or the abandonment of existing lines of railroad is not an invasion of a field reserved to the state. The obligations assumed by a railroad under its charter, even though it be chartered for purely intrastate service, carry with it the duty to render efficient services in interstate commerce and Congress has power to see that interstate service is adequately rendered, fostered, and developed. Such power necessitates the right to grant or deny a certificate for the construction of a new line of railroad, or the abandonment of an existing line as provided by the Transportation Act of 1920.

As a result of this authority over new construction and abandonment there has been a tremendous gain in the protection of the rights of private capital invested in railroad property. The interests of people and industries located along the railroads of the United States have been safeguarded and the national welfare has been promoted by guiding the development of a system of railroads prepared to handle the interstate traffic of the country promptly and to obtain a reasonable return only upon the property no greater in amount than the public may justly be required to support.

APPENDIX (A)

Paragraphs 18, 19, 20 and 22
Transportation Act
1920

(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line or railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction or operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation

in each county in or through which said line of railroad is constructed or operates.

(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

(22) The authority of the Commission conferred by paragraphs (18) to (20), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.

APPENDIX (B)

Railroad Construction and Abandonment

1920-1928

	Construction	Abandonment	Net Change
Grand Total	6,621.77	4,892.23	+ 1,729.54
Eastern District	756.05	1,854.31	— 1,098.26
New England	112.40	144.91	— 32.51
Maine	112.40	18.54	+ 93.86
New Hampshire	.....	35.34	— 35.34
Vermont	.....	.....	.....
Massachusetts	.....	77.73	— 77.73
Rhode Island	.....	.....	.....
Connecticut	.....	13.30	— 13.30
Middle Atlantic	106.63	232.54	— 125.91
New York	23.06	74.94	— 51.88
New Jersey	11.54	15.44	— 3.90
Pennsylvania	72.03	142.16	— 70.13
East North Central	537.02	1,476.86	— 939.84
Ohio	127.48	449.03	— 321.55
Indiana	50.53	127.95	— 77.42
Illinois	225.37	289.58	— 64.21
Michigan	140.24	419.13	— 278.89
Wisconsin	3.40	191.17	— 187.77
Southern District	1,384.82	1,086.44	+ 298.38
South Atlantic	1,224.65	628.01	+ 596.64
Delaware	.....	.....	.....
Maryland	.....	2.50	— 2.50
Virginia	71.25	18.30	+ 52.95
West Virginia	111.00	27.61	+ 83.39
North Carolina	58.26	99.58	— 41.32
South Carolina	124.00	40.05	+ 83.95
Georgia	51.00	307.68	— 256.68
Florida	819.14	132.29	+ 686.85
East South Central	150.17	458.43	— 308.26
Kentucky	59.55	32.27	+ 27.28
Tennessee	28.15	53.58	— 25.43
Alabama	224.85	102.28	+ 122.57
Mississippi	276.62	270.30	+ 06.32

Railroad Construction and Abandonment

1920-1928

	Construction	Abandonment	Net Change
Grand Total	6,621.77	4,892.23	+ 1,729.54
Western District	4,426.15	1,951.48	+ 2,474.67
West North Central	394.60	309.92	+ 84.68
Minnesota	65.05	127.65	— 62.60
Iowa	.....	92.67	— 92.67
Missouri	16.91	54.09	— 37.18
North Dakota	.....	5.00	— 5.00
South Dakota	133.20	23.51	+ 109.69
Nebraska	62.50	7.00	+ 55.50
Kansas	126.94	.....	+ 126.94
West South Central	1,710.18	717.37	+ 992.81
Arkansas	50.32	142.19	— 91.87
Louisiana	156.30	297.13	— 140.83
Oklahoma	315.07	140.51	+ 174.56
Texas	1,188.49	137.54	+ 1,050.95
Mountain	1,320.81	507.94	+ 812.87
Montana	588.10	93.89	+ 494.21
Colorado	76.50	120.76	— 44.26
New Mexico	100.00	72.80	+ 27.20
Arizona	15.00	42.45	— 27.45
Idaho	266.86	.....	+ 266.86
Wyoming	111.40	72.15	+ 39.25
Nevada	18.42	93.58	— 75.16
Utah	144.53	12.31	+ 132.22
Pacific	1,000.56	416.25	+ 584.31
Washington	185.48	119.68	+ 65.80
Oregon	521.98	31.22	+ 490.76
California	293.20	265.35	+ 27.86
Alaska	38.75	.....	+ 38.75
Hawaii	16.00	.....	+ 16.00

BIBLIOGRAPHY

This study has been based chiefly upon the decisions of the Interstate Commerce Commission contained in the Finance Reports of the Interstate Commerce Commission.

Finance Reports

Volume

65 May, 1920, to January, 1921.
67 January, 1921, to June, 1921.
70 June, 1921, to December, 1921.
71 January, 1922, to June, 1922.
72 June, 1922, to October, 1922.
76 November, 1922, to March, 1923.
79 March, 1923, to July, 1923.
82 July, 1923, to December, 1923.
86 December, 1923, to April, 1924.
90 May, 1924, to October, 1924.
94 October, 1924, to April, 1925.
99 April, 1925, to October, 1925.
105 October, 1925, to April, 1926.
111 April, 1926, to September, 1926.
117 September, 1926, to March, 1927.
124 March, 1927, to July, 1927.
131 July, 1927 to January, 1928.
138 January, 1928, to June, 1928.
150 June, 1928, to February, 1929 (advanced opinions).

United States Government

United States Interstate Commerce Commission, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st and 42nd Annual Reports for the years 1919 to 1928, inclusive.

United States Statute at Large. 41. (Transportation Act of 1920.)

United States Interstate Commerce Commission. Instruction in the matter of application under paragraphs 18-21, inclusive, Section 1, Act of 1920, etc., for certificates of Public Convenience and Necessity for New Construction, 1924. . . . Instructions in the matter of Certificates for the Abandonment of Lines, 1921.

Congressional Record, V. 58, pp. 748-750.

House of Representatives Report No. 456, 66th Congress, 1st Session. Committee on Interstate Commerce.

House of Representatives Report No. 10453, pp. 8309-1818.

United States Supreme Court Cases are referred to in the footnotes.

Statistics of Railways in the United States. 1919-1927.

Secondary Sources

Burgess, K., Compulsory Construction of New Lines of Railroad. 20 Michigan Law Review. 1920. . . . Federal Regulation of Railway Management and Finance. 1924.

Daggett, S. R., Principles of Inland Transportation. 1928.
Elliott, A., Roads and Streets. 1911.
Dixon, F. H., Railroads and Governments. 1922.
Holmes, F. L., Regulation of Railroads and Utilities in Wisconsin. 1915.
Jones, E., Principles of Railway Transportation. 1924.
Jones & Vanderblue, Railroads, Cases and Selections. 1925.
Frederick J. H., Federal Regulation of Railway Securities under the Transportation Act of 1920. 1927.
Locklin, D. P., Railroad Regulation Since 1920. 1928.
McVeagh, R., The Transportation Act, 1920. 1924.
Miller, S. L., Railway Transportation, Principles and Points of View. 1918.
National Transportation Conference, Program of Railway Regulation. 1919.
Needham, C. W., Rights of the States and Adjacent Owners of Property in the Maintenance of Operation of a Railroad, 32 Yale Law Journal. 1923.
Vanderblue, H. B., and Burgess, K. F., Railroads, Rates, Services, Management. 1923.

OTHER SOURCES

Railway Age.
Railway Statistics of the United States. 1927.
Bureau of Railway News and Statistics.
Railway Data. Committee on Public Relations of the Eastern Railroads.